163 U S 675

TRANSCRIPT OF RECORD.

163-675

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 212.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY,
PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

FILED FEBRUARY 6, 1896.

(15,253.)

ance company in a better position to defend itself than it was formerly? Were the legislators attempting to aid the insurers or the beneficiaries of the insured? Manifestly the latter. And this being so a construction must be placed upon the statute which will as far as possible carry into effect the intent of the lawmakers.

IV

We contend, therefore, that plaintiff's application should be denied for the following reasons:

First. Because the only question involved in the case is the interpretation of a local statute concerning which there has not been the slightest variance of opinion among the judges of the lower courts.

Second. Because plaintiff is precluded from urging the unconstitutionality of this statute as a reason for granting this petition, having failed to raise the question in the trial court.

Third. Plaintiff being a foreign corporation is not in a position to question the constitutionality of the laws of the State of Missouri.

Fourth. Because the statute in question *is* constitutional, being a wise and salutary regulation of a branch of trade which the State is perfectly competent to control in the exercise of its police powers.

Fifth. Because the construction placed upon the statute by the Circuit Court and the Court of Appeals, is correct.

Respectfully submitted,

L. R. WILFLEY,

For Defendant in Error.

163 U S 675

TRANSCRIPT OF RECORD.

163-675

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 212.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

FILED FEBRUARY 6, 1893.

(15,253.)

(15,253.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 212.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Caption	*a*	1
Writ of error to supreme court of New Jersey	1	1
Transcript from supreme court of New Jersey	2	1
Complaint	3	2
Answer	4	3
Hearing, &c	5	3
Evidence for plaintiff	6	4
Acts of incorporation, &c., of Jersey City	6	4
Act to cede to mayor, &c., of Jersey City certain lands	6	4
Resolution of board of riparian commissioners, Nov. 9, 1872	9	6
Minutes of board of riparian commissioners, Nov. 25, 1872	11	7
Minutes of board of riparian commissioners, Jan. 4, 1873	11	7
Map offered	11	8
Resolution of board of public works, March 2, 1885	12	8
Resolution of board of finance and taxation, March 2, 1885	12	8
Proof of execution of bond	14	9
Map offered	14	9

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 9, 1895.

	Original.	Print.
Evidence for defendant	14	9
Charter and supplements of Central Railroad Company	14	9
Act to ascertain rights of the State, &c., April 11, 1864, &c.	15	10
Resolution of the board of aldermen, May 14, 1872	16	10
Resolution of the board of aldermen, July 16, 1872	16	10
Minutes of board of riparian commissioners, Nov. 9, 1872	17	10
Minutes of board of riparian commissioners, Nov. 25, 1872	17	11
Report of committee on laws and ordinances, December 2, 1872, &c	17	11
Objections of the mayor, December 6, 1872	21	13
Proceedings of board of aldermen, January 7, 1873	22	14
Proceedings of board of aldermen, December 10, 1872	23	14
Opinion of city attorney, January 7, 1873	23	14
Resolution of board of aldermen, January 7, 1873	27	16
Minutes of board of riparian commissioners, Sept. 17, 1874	27	16
Grant of the State of New Jersey *et al.* to railroad company, November 12, 1874	30	18
Testimony of Jacob M. Clark	40	24
Statement of taxes paid by American Dock and Improvement Company upon that portion of their property embraced in the grant to the city	73	46
Testimony of William H. Peddle	82	53
Defendant rests	82	53
Evidence for plaintiff	82	54
Draft in handwriting of Jacob M. Clark	82	54
Testimony of Robert C. Bacot	85	55
John C. Payne	85	55
Judgment	86	56
Clerk's certificate	87	56
Assignment of errors	88	57
Rule for judgment	91	59
Opinion on special case	93	60
Check list	102	65
Order staying remittitur, &c	103	66
Judgment	105	66
Writ of error (copy)	107	67
Citation (copy)	110	68
Bond	112	69
Stipulation as to maps, deeds, &c	116	70
Assignment of errors	118	71
Clerk's certificate	127	75
Writ of error (original)	128	75
Return on writ of error	130	76

a New Jersey Court of Errors and Appeals.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY.
} In Error to Supreme Court.

On special verdict or findings.

B. Williamson and J. D. Bedle, for pl't'ff in error.
R. S. Hudspeth, Wm. D. Edwards and Gilbert Collins, for def't in error.

1 N. J. Court of Errors and Appeals.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY.
} In Error to Supreme Court.

On special verdict or findings.

B. Williamson and J. D. Bedle, for pl't'ff in error.
R. S. Hudspeth, Wm. D. Edwards, and Gilbert Collins, for def't in error.

NEW JERSEY, *ss:*

The State of New Jersey to the chief justice and other justices of our supreme court of judicature, Greeting:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said supreme court of judicature, before you, between The Mayor and Alderman of Jersey City, plaintiffs, and The American Dock and Improvement Company, defendant, in a certain plea in ejectment, manifest error hath intervened, to the great damage of the said The American Dock and Improvement Company, as it is said, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under
2 your seal, the record and proceedings aforesaid, with all things touching the same, to our judges of our court of errors and appeals in the last resort in all causes, at Trenton, on the 1st day of April next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right, and according to the law and custom of the State of New Jersey, ought to be done.

Witness, our chancellor and president judge of our said court of errors and appeals, at Trenton aforesaid, the twelfth day of March

in the year of our Lord one thousand eight hundred and ninety-two.

HENRY C. KELSEY, *Clerk.*
B. WILLIAMSON, *Attorney.*

The answer of the justices of the supreme court of New Jersey within named, the record and proceeding whereof mentioned is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY,
Chief Justice.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF JERSEY CITY *vs.* THE AMERICAN DOCK AND IMPROVEMENT COMPANY. } In Ejectment. On Postea, etc.

Rob't S. Hudspeth, attorney.

3 As yet of the third day of May, A. D. eighteen hundred and eighty-six.

Witness Mercer Beasley, Esquire, chief justice.

BENJ. F. LEE, *Clerk.*

HUDSON COUNTY, *ss:*

The Mayor and Aldermen of Jersey City the plaintiffs in this action, by Roderick B. Seymour, their attorney, demand of The American Dock and Improvement Company, a body corporate under the laws of the State of New Jersey the defendants therein, the possession of so much and such parts of the lands which were on the fourth day of April A. D. eighteen hundred and seventy-two, or were theretofore under tide water of Commmunipaw bay, and which lands are described as situate, lying and being in the city of Jersey City, in the county of Hudson and State of New Jersey, and bounded as follows, to wit: Commencing at a point in the centre of Van Vorst street, if extended southerly, and distant thirteen hundred feet southerly from the southerly line of Grand street, Jersey City; and from thence running westerly and parallel with Grand street, one thousand and ninety feet (1,090); thence northerly, at right angles with Grand street, eight hundred and ten (810) feet to the centre of Morris street if extended westerly; thence easterly and parallel with Grand street to the present high-water mark on the southwesterly side of Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street; thence southerly along the centre of Van Vorst street, if extended southerly, to the place of beginning; and containing about twenty acres more or less.

And the plaintiffs say that their right to the possession of the

same accrued on the eighth day of March, eighteen hundred
4 and eighty-five and that the defendants wrongfully deprive
them of the possession thereof, to their damage ten thousand dollars.

And the said American Dock and Improvement Company by B. Williamson, its attorney appears and defends this action as to a part of the premises claimed by the plaintiffs in their declaration to wit: about nineteen and one-tenth acres thereof, situate and described as follows to wit: Commencing at a point in the centre of Van Vorst street, if extended southerly, and distant thirteen hundred feet southerly from the southerly line of Grand street, Jersey City and from thence running westerly and parallel with Grand street one thousand and ninety feet; thence northerly at right angles with Grand street, two hundred and eighty-seven feet more or less to the middle line of a tract of land designated as Bergen street, as shown on a map of the farm of Cornelius Van Vorst, made for him by Joseph F. Bridges, surveyor, dated June A. D. 1835, and filed in the office of the clerk of Hudson county April 24th A. D. 1847; thence easterly along the middle line of said tract so designated as Bergen street, one hundred and sixteen feet more or less to the middle line of a tract designated on the above-mentioned map as Beach street (otherwise known as Grove street); thence northerly in the middle line of said tract so designated as Beach street (otherwise Grove) five hundred and twelve feet more or less to the centre line of Morris street, if extended westerly; thence easterly and parallel with Grand street to the present high-water mark on the southwesterly side of Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street; thence southerly through the centre of Van Vorst street, if extended southerly to the place of beginning, containing about nineteen and one-tenth acres, more or less, and as to the part so defended for, they say they are
not guilty of the injury whereof the said the Mayor and
5 Aldermen of Jersey City hath complained in their declaration; and of this they put themselves upon the country, and the said the Mayor and Aldermen of Jersey City doth the like.

Therefore let a jury thereupon come before the chief justice or some other justice of the supreme court of the State of New Jersey at a circuit court holden at Jersey City in and for the county of Hudson on the first Tuesday of April A. D. eighteen hundred and ninety by whom etc.

And now, at this day, to wit, the twelfth day of March, A. D. eighteen hundred and ninety-two, before our supreme court at Trenton comes the said plaintiff, by their attorney aforesaid and the justice before whom etc., having sent hither his record had before him in these words, to wit:

Afterwards, to wit, at a circuit court held at Jersey City in and for the county of Hudson, according to the statute in such case made and provided, on the first Tuesday of April, A. D. eighteen hundred and ninety, to wit, on the nineteenth day of May, A. D. eighteen hundred and ninety, by the Honorable Jonathan Dixon,

one of the associate justices of the supreme court of the State of New Jersey, come as well the said plaintiff, The Mayor and Alderman of Jersey City, as the said defendant, The American Dock and Improvement Company, by their respective attorneys within mentioned; and a jury being waived the issues within contained were then and there by consent of the parties, tried by the said justice, and the witnesses for both parties having been sworn and examined and the evidence of both parties having been offered and counsel for both parties having been heard, the said justice does find and determine in accordance with the special case agreed upon by the parties, as follows, (in which there are no disputed facts, except as to the amount of filling on the *locus in quo* testified to by Jacob M. Clerk and John C. Payne and concerning which the said justice finds as a fact that the cost of said filling was not less than from twelve thousand to fifteen thousand dollars, nor more than
5½ thirty-five thousand dollars, and except also with regard to the *bona fides* of the grant of A. D. eighteen hundred and seventy-four to the Central Railroad Company of New Jersey by the riparian commissioners, and on that point the said justice finds that the parties to that conveyance acted with full knowledge of what had been done and omitted by the city authorities, but in entire good faith, believing that the Central Railroad Company of New Jersey was, or represented, the riparian owner, and would get by conveyance, a valid title to the property described in the instrument and on that basis the Central Railroad Company of New Jersey and those claiming under it made the improvements on the *locus in quo*.)

6 To sustain the said issue on its part the said plaintiff offered in evidence:

"An act to incorporate Jersey City," approved March 18, A. D. 1851. P. L. 1851, p. 392 *et seq.*

"An act to consolidate and make into one city, to be called Jersey City, the cities of Jersey City, Hudson and Bergen, in the county of Hudson," approved March 17, A. D. 1870. P. L. 1870, p. 1170 *et seq.*

"An act to reorganize the local government of Jersey City," approved March 31, 1871. P. L. 1871, p. 1094 *et seq.*; also all supplements and amendments to said charter (*pro ut* the same), and the following act of the legislature of New Jersey, approved April 4, A. D. 1872. P. L. 1872, p. 1356.

Chapter DXCVI.

"An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto."

Whereas, the riparian commissioners of the State of New Jersey, in their reports for the years eighteen hundred and seventy-one and seventy-two, have called the attention of the legislature to the fact that Jersey City is without public docks, and have recommended

that a part of the large basin laid out by the commissioners in eighteen hundred and sixty-four be conveyed to the mayor and aldermen of Jersey City for public uses; therefore

1. Be it enacted by the senate and general assembly of the State of New Jersey, That the said State doth hereby grant to the mayor and aldermen of Jersey City, in fee-simple, so much and such parts of the lands which are now under tide water, or were heretofore under tide water of said Communipaw bay, commencing at a
7 point in the centre of Van Vorst street, if extended southerly, and distant thirteen hundred feet southerly from the southerly line of Grand street, Jersey City, and from thence running westerly, and parallel with Grand street, one thousand and ninety feet; thence northerly, at right angles with Grand street, eight hundred and ten feet to the centre of Morris street, if extended westerly; thence easterly and parallel with Grand street, to the present high-water mark, on the southwesterly side of the Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street; thence southerly through the centre of Van Vorst street, if extended southerly, to the place of beginning.

2. And be it enacted, That the said mayor and aldermen, by their appropriate board, shall have full control and regulation of the basin and wharves and land conveyed to them; and they shall be and are hereby required to improve the same with all convenient despatch in such manner that, at least, one third of the area of said lands shall be flowed by the tide water and made navigable for such vessels as the citizens or inhabitants of said city, or persons doing business therein, may, under the control and regulation of said board, desire to use said basin.

3. And be it enacted, That for the title hereby conveyed the city shall pay into the treasury of the State, or give to this State, a bond for such sum of money, and on such terms as to payment and interest as the board of riparian commissioners shall, under all the circumstances of the case, and taking into consideration the public purposes to which said lands are to be applied, fix and determine as a proper and equitable compensation to the State for such title, and until the giving of such bond, or the payment of such money, said city shall not enter on said lands; provided, nothing in this
8 act contained shall prejudice or impair the rights of the shore owners to said lands.

4. And be it enacted, That the said city may fill up, reclaim and make wharves of not exceeding two-thirds of the area of said lands, and may charge dockage and wharfage for the use of said basin and wharves; provided, said charges are reasonable, or they may lease the whole or any part of the said lands for a term of years, to be improved in the manner prescribed in this section.

5. And be it enacted, That there shall be established adjacent to the lands hereinbefore described and granted a tide-water basin, embracing all that tract of land under water described as follows: Commencing at a point on the easterly line of Warren street if produced southerly, distant eighteen hundred feet southerly from the southerly line of Grand street, Jersey City, which point is at the

southwesterly corner of the grant made to the Morris Canal and Banking Company, and from thence running westerly and parallel with Grand street twenty-eight hundred feet; thence northerly, at right angles with Grand street, five hundred feet; thence easterly and parallel with Grand street; twenty-eight hundred feet to the easterly line of Warren street; thence southerly along said easterly line of Warren street extended southerly five hundred feet to the place of beginning; that the above tide-water basin in this act described shall be and remain and the same is hereby dedicated as and for a tide-water basin; and owners of any land which shall adjoin the said tide-water basin, their successors, heirs and assigns, may charge wharfage, dockage and other charges incident to the use of wharves; and it is hereby declared that this provision shall have the effect of a contract so that the said tide-water basin shall be and remain such forever; but so that the said tide-water basin shall be dredged and kept in order without expense to the State.

9 6. And be it enacted, That the board of riparian commissioners shall reduce to writing a description of so much and such parts of said lands as aforesaid, and file a map and description in the office of the secretary of state of this State, and duplicates of said map and description in the office of the clerk of the county of Hudson, authenticating the same in such case by their signatures, and reciting such parts of the act as shall indicate their authority and the purpose and object of said map and description, and said map and description or duly certified copies thereof shall be full and plenary evidence of the title under this act of the city to the lands so described and granted, to the mayor and aldermen of Jersey City, by the first section of this act.

7. And be it enacted, That this act shall take effect immediately. Approved April 4, 1872.

(*Pro ut* the act.)

The plaintiff proved the adoption on November 9, A. D. 1872, by the board of riparian commissioners of the State of New Jersey, of the following preamble and resolutions, as appears by the minutes, viz:

"Commissioner Lathrop, from the committee to confer with the authorities of Jersey City as to the grant to the city of lands of the State under the tide water of Communipaw bay, reported conference had with the same, whereupon on motion, it was—

Resolved, That for the title conveyed by the State of New Jersey to the mayor and aldermen of Jersey City in fee-simple by the act approved April 4, 1872, for so much and such parts of the lands which are now under tide water, or were heretofore under tide water of Communipaw bay, described in the first section of said act as thereby granted to the mayor and aldermen of Jersey City,

10 the said city shall give to the State of New Jersey a bond for the sum of one thousand dollars, payable in one year, with interest at the rate of seven per cent. per annum, the interest payable semi-annually, which sum of money and terms as to payment

and interest, the board of riparian commissioners, under all the circumstances of the case, and taking into consideration the public purposes to which said lands are to be applied, do pursuant to the provisions of the said act, hereby fix and determine as a proper and equitable compensation to the State for such title;

Resolved, That the engineer of this board communicate to the committee on laws and ordinances of the board of aldermen of Jersey City, the action of this board fixing and determining pursuant to the provisions of the act approved April 4, 1872, the sum for which a bond is to be given by the said city to the State, and terms as to payment and interest as a proper and equitable compensation to the State for the title to the lands of the State under tide water of Communipaw bay conveyed to the mayor and aldermen of Jersey City by said act;

Resolved, That the engineer prepare the map and written description required by the sixth section of the act approved April 4, 1872, to be filed in the office of the Secretary of State, and duplicates of said map and description to be filed in the office of the clerk of the county of Hudson, of so much and such parts of the lands of the State as are now under tide water or were heretofore under tide water of Communipaw bay, as by the first section of said act are granted by the State of New Jersey to the mayor and aldermen of Jersey City, reciting such parts of said act as shall indicate
11 the authority of the board of riparian commissioners, and the purpose and object of said map and description pursuant to said sixth section of said act."

And the plaintiff proved, from the minutes of said board of riparian commissioners of November 25, A. D. 1872, the following action:

"On motion, the engineer was directed to prepare a copy showing the location of the tide-water basin in Communipaw bay, established by act of the legislature, approved April 4, 1872, and present the same to the board at its next meeting."

And from such minutes of January 4, A. D. 1873, the following record:

"The engineer reported having filed in the office of the secretary of state at Trenton, and in the clerk's office of the county of Hudson, the following maps:

"Maps showing the tide-water basin in Communipaw bay, established by act of the legislature of New Jersey, approved April 4, 1872."

And the plaintiff offered in evidence the said map as filed December 12, A. D. 1872, in the office of the clerk of the county of Hudson, signed by said commissioners and their engineer, dated December, 7, A. D. 1872 (*pro ut* the map), which map is a duplicate of the map filed in the secretary of state's office, and proved that said map shows the bounds of the tide-water basin, the high-water line of Communipaw bay at the portions shown on the map as then existing, and the streets of Jersey City as they then existed, so far as they are attempted to be shown on the map, the location of the streets and the names. It was admitted that no other map was filed under

said act of April 4, A. D. 1872, and proved that the map filed
12 was merely filed (by order of the commissioners) for the purpose of showing the tide-water basin (and not the grant of Jersey City) and that there is no map filed of the grant to Jersey City neither in the office of the secretary of state nor in the county of Hudson.

The plaintiff proved the adoption by the board of public works of Jersey City on March 2, A. D. 1885, and the approval by the mayor of said city on the same day of the following resolution, viz:

Resolved, That by and with the concurrence of the board of finance and taxation that the grant from the State of New Jersey to "The mayor and aldermen of Jersey City," by the act of the legislature of New Jersey, entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, be and the same is hereby accepted; and that there be issued and delivered as the compensation provided for by said act, as the same has been determined by the board of riparian commissioners of New Jersey by virtue of said act, a bond of the mayor and aldermen of Jersey City to the State of New Jersey, in the sum of one thousand dollars, to be dated on the day of the approval by the mayor of the concurring resolution of the said board of finance and taxation, and payable in one year after the date thereof, with interest at seven per cent. per annum, payable semi-annually.

And the plaintiff proved the adoption by the board of finance and taxation of Jersey City, on March 2, A. D. 1885, and the approval by the mayor of said city on March 4, A. D. 1885, of the following resolutions, viz:

Resolved, That the following resolution adopted by the
13 board of public works at its meeting held this date, viz:

Resolved, That by and with the concurrence of the board of finance and taxation that the grant from the State of New Jersey to "The mayor and aldermen of Jersey City," by the act of the legislature of New Jersey, entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, be and the same hereby is accepted, and that there be issued and delivered as the compensation provided for by said act as the same has been determined by the board of riparian commissioners of New Jersey, by virtue of said act, a bond of the mayor and aldermen of Jersey City to the State of New Jersey, in the sum of one thousand dollars, to be dated on the day of the approval by the mayor of the concurring resolution of the said board of finance and taxation, and payable in one year after the date thereof, with interest at seven per centum per annum, payable semi-annually.

Be and the same is hereby concurred in by the board of finance and taxation.

And further it was—

Resolved, That there be issued under the corporate seal of the city

and signed by the mayor and city clerk and delivered to the treasurer of the State of New Jersey, a bond of the mayor and aldermen of Jersey City to the State of New Jersey in the sum of one thousand dollars, to be dated on the day of the approval of this resolution by the mayor, and payable in one year after the date thereof, with interest at seven per cent. per annum, payable semi-annually, as the compensation provided for in said act, as the same has been
14 determined by the board of riparian commissioners of New Jersey.

And the plaintiff proved the execution of a bond pursuant to the last resolution, by the mayor and aldermen of Jersey City to the State of New Jersey, bearing date March 4, A. D. 1885, for one thousand dollars, due on March 4, A. D. 1886, with interest thereon at the rate of seven per centum per annum from March 4, A. D. 1885, payable semi-annually on the fourth day of every September and March thereafter until the bond is paid, and the payment of said bond to the State treasurer of New Jersey on May 3, A. D. 1886. The said bond, upon being executed, was delivered to John J. Toffey, the State treasurer aforesaid, and receipted for by him as treasurer, and the payment was receipted for by him.

And the plaintiff proved and offered in evidence a map showing the position of the tract of land granted to the mayor and aldermen of Jersey City by said act of April 4, A. D. 1882, with respect to the tide-water basin in that act, and to the streets of Jersey City, which map was made by a surveyor by taking a tracing of the tide-water basin map, which was filed as aforesaid in the clerk's office of the county of Hudson, and putting on that the grant from the actual description, the grant being in pink (*pro ut* the same); and also proved that all of said tract of land so granted was, on April 4, A. D. 1872, under the tide waters of Communipaw bay.

Whereupon the plaintiff rested.

The defendant proved the charter of the Central Railroad Company of New Jersey and its supplement, as follows:

"An act to incorporate the Somerville and Easton Railroad Company," approved February 26, A. D. 1847.

Supplement approved February 22, A. D. 1849.

15 Supplement approved March 17, A. D. 1854, which was accepted according to its terms. Attention was particularly called to section 1.

Supplement approved March 23, A. D. 1859.

Supplement approved February 23, A. D. 1860, which authorizes the company to extend its road to the New York bay at or south of Jersey City, &c. Attention was called to section 4: "That nothing herein contained shall be construed to prejudice the claims of riparian owners, &c."

Supplement approved February 23, A. D. 1863.

Supplement approved March 11, A. D. 1863.

Supplement approved April 5, A. D. 1865.

Supplement approved April 6, A. D. 1865.

Supplement approved March 5, A. D. 1866.

"An act respecting 'The Central Railroad Company of New Jersey,

and the Newark and New York Railroad Company,'" approved March 17, A. D. 1870.

Supplement to original act approved March 28, A. D. 1872.

Supplement approved March 21, A. D. 1874, as printed in the pamphlet laws respectively (*pro ut* the same).

And the defendant read in evidence, "An act to ascertain the rights of the State and riparian owners to the land under water on the bay of New York and elsewhere in the State," approved April 11, 1864; the supplements to said act, approved March 31, A. D. 1869, March 21, A. D. 1871, April 4, A. D. 1872, and March 27, A. D. 1874, and the joint resolution number four relative to the riparian commissioners, approved March 17, A. D. 1870, and the act relative to the riparian commissioners, approved April 6, 1871, as printed in the pamphlet laws respectively, or the revision. Also the wharf act, approved March 18, A. D. 1851, and the reports of the riparian commissioners from A. D. 1865, to A. D. 1875, inclusive, as found in the public documents published by authority of the legislature for the various years, with the accompanying maps and reports.

16 And the defendant proved that on the 14th day of May, A. D. 1872, the board of aldermen of Jersey City adopted the following resolution, viz:

"Resolved, That the subject-matter of senate bill No. 99, approved April 4, 1872, entitled 'An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto, be referred to the committee on laws and ordinances for consideration and report."

The defendant also proved that on July 16, A. D. 1872, the board of aldermen of Jersey City adopted the following resolution, viz:

Resolved, That the riparian commissioners be requested to communicate to board of aldermen the amount fixed by said commission and to be paid by corporation of Jersey City to the State, for the grant to the city of a basin in Communipaw or South cove, as contemplated in senate bill No. 99, passed at the last session of the legislature.

That the city clerk on July 19, A. D. 1872, sent a copy of said resolution to the board of riparian commissioners, and on July 20, A. D. 1872, by that board,

On motion, it was resolved that the communication from the common council of Jersey City be referred to a committee consisting of Commissioners Lathrop and Randolph with the engineer of the board, to confer with the committee of the common council upon the subject of the communication, and report to this board.

17 That the minutes of said board of riparian commissioners of November 9, A. D. 1872, recite that

"Commissioner Lathrop, from the committee to confer with the authorities of Jersey City as to the grant to the city of lands of the

State under the tide water of Communipaw bay, reported conferences had with the same, whereupon, on motion,"

the resolution of the date last named proved by the plaintiff was adopted (*pro ut* the same).

And the defendant proved that the minutes of the board of riparian commissioners of November 25, A. D. 1872, show the following record:

"The engineer reported having communicated to the committee on laws and ordinances the action of the board of the last meeting in fixing the price and terms of payment for the grant made by the State to the mayor and aldermen of Jersey City for lands under water in Communipaw bay."

It was also proved that on December 3, A. D. 1872, the committee on laws and ordinances reported as follows:

Honorable board of aldermen of Jersey City:

Your committee on laws and ordinances, to whom was referred by resolution adopted May 14, 1872, for consideration and report the act of the legislature of the State of New Jersey, entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, respectfully report that said act grants to the city in fee-simple certain lands under water within certain limits, and particularly described in said act and more fully
18 defined on map herewith presented, on condition that the city shall pay to the State a bond for such sum of money and on such terms as to payment and interest as the board of riparian commissioners shall fix and determine, and that the corporate authorities shall, with all convenient despatch, improve the basin so that at least one-third of the area of the lands conveyed shall be flowed by tide water and made navigable for vessels.

Your committee would further report that they have endeavored to give as much publicity as possible to the subject-matter referred to them, and have held several committee meetings, and by advertisements in the newspapers of the city have invited the public to appear before your committee to discuss the question of acceptance or rejection of the proposed grant.

Your committee are of the opinion that the act in question and acceptance of grant named therein are of considerable importance, and will give to our city facilities of a character long needed, and which cannot be secured at reasonable cost in any other part of our water front.

Your committee would further report that after several meetings with the board of riparian commissioners of the State, at which the amount to be paid was considered, and at which meetings your committee, believing the subject-matter of conveyance to bear more the intent of a gift from the State than question of enriching the treasury of the State, sought to obtain the fixing of the smallest sum as compensation, and finally, on the 11th day of November, 1872,

received from R. C. Bacot, Esq., secretary and engineer of the board of riparian commissioners, a communication which is hereto annexed, setting forth that at a meeting of said commissioners, held November 9, 1872, the compensation for said grant was fixed
19 at one thousand dollars in a bond to be taken therefor, payable in one year after date, with interest thereon at the rate of seven per cent. per annum, payable semi-annually.

Your committee, having given the subject referred to them every consideration, respectfully report and recommend the adoption of the following resolutions.

S. M. SMITH,
EDWARD F. C. YOUNG,
MARMADUKE TILDEN,
Committee on Laws and Ordinances.

JERSEY CITY, *December* 3, 1872.

Resolved, That the mayor and aldermen of Jersey City accept from the State of New Jersey certain lands of the State now and heretofore under the tide waters of Communipaw bay as provided for in the act of the legislature of the State of New Jersey, entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide water adjacent thereto," approved April 4, 1872.

Resolved, That the board of finance and taxation are hereby requested to direct a bond to be issued under the corporate seal, drawn to the order of the State of New Jersey, for the sum of one thousand dollars, payable in one year from its date, with interest at the rate of seven per cent. per annum, payable semi-annually, as compensation for land conveyed under authority of said act; the said bond to be delivered upon the filing according to law of the grant for said lands signed by the governor and attorney general of the State as contemplated in the communication from the secretary and engineer of the board of the riparian commissioners bearing date November 11, 1872.

20 Attached to the said report is the following communication, viz.:

R. C. Bacot, civil engineer, office No. 31 Montgomery St.,

JERSEY CITY, *November 11th*, 1872.

Alderman Smith, chair'n committee on laws and ordinances.

D. SIR: At a meeting of the board of riparian commissioners held on the 9th inst., the committee to whom was referred the subject of fixing the price to be paid by the corporation of Jersey City to the State of New Jersey for the grant of lands under water in the South cove, reported the compensation at one thousand dollars in a bond to be taken therefor, payable in one year after the date thereof with interest at seven per cent. per annum, payable semi-annually.

The said grant to be subject to the signatures of the governor and attorney general of the State.

Respectfully yours, ROB'T C. BACOT,
Sec'y & Engineer.

There is also attached to said report a map (*pro ut* the map).

And the defendant proved—

That the report was received.

That Alderman Smith, by consent of the board, presented the petition of R. Hillier & Sons and others, for the acceptance of the grant, which petition was received and read.

That the resolutions were then adopted.

Eight votes in favor and three against.

The defendant also proved that said last-stated resolutions
21 were sent to the mayor of Jersey City on December 5, A. D. 1872; that on December 10, A. D. 1872, the mayor filed his objections with the city clerk, vetoing the resolutions; that on the same day the objections were laid before the board of aldermen, read, received, ordered entered in the minutes, and consideration postponed to January 7, A. D. 1873.

Said objections were as follows:

MAYOR'S OFFICE, CITY HALL,
JERSEY CITY, *December* 6, 1872.

To the honorable board of aldermen of Jersey City.

GENTLEMEN: I herewith return with my objections a resolution passed by your honorable body on Tuesday evening last, authorizing the purchase from the State of New Jersey of certain lands under the tide waters of Communipaw bay, as described in an act of the legislature, approved April 4, 1872. I have carefully examined the city charter, and have been unable to discover any section of the same wherein your honorable body have authority to purchase land for the purpose named in the resolution. If I am correct in my conclusion this objection alone would prevent the purchase of the property, as I could not legally sign a warrant or bond for the payment of such lands.

Provided that this objection was removed there are, in my opinion, other reasons why this property should not be purchased. The land is all under water, and the north side of the basin, which is the nearest point to Grand street, is about four hundred feet south of the Morris canal. In order to make this property available for dock purposes, the space (which is also under water) between the the Morris canal and the north side of the proposed basin should be filled to the grade of Grand street, the expense of which would
22 be very heavy, both upon the owners of the shore property as well as upon the city at large. Before the city authorities could commence filling (or improve) any portion of the proposed basin, it would be necessary to first compensate the shore owners for the land surrounding the basin. I beg leave to call your attention to a portion of section third of the special act (approved April 4,

1872), which reads as follows: Provided, that nothing in this act contained shall prejudice or impair the rights of the shore owners to said lands.

To what extent this provision may effect the property in question, I am unable to say, but if I interpret the reading of this section correctly, the city would undoubtedly be at the mercy of the shore owners of this land in the event of a purchase. I cannot, therefore, see where the purchase of this property can be of any practical use or benefit to the inhabitants of Jersey City for dock purposes. The people of the city are very much in need of dock facilities, and I will cheerfully approve of any legal measure that will provide public docks for the city, but cannot consistently fav r a resolution to purchase lands under water for dock purposes, where there is any question to the title of possession of such, or where, in my judgment, the inhabitants of Jersey City will not receive any benefit from such purchase.

I am, gentlemen,

Very respectfully yours, &c.,

CHAS. H. O'NEILL, *Mayor.*

And the defendant proved that at the regular meeting of the board of aldermen of Jersey City, held January 7, A. D. 1873,

On motion of Alderman Smith, the objections presented December 10, 1872, from his honor the mayor, to approving resolu-
23 tion adopted December 3, 1872, accepting from the State of New Jersey certain lands of the State now and heretofore under the tide waters of Communipaw bay, as provided in an act of the legislature approved April 4, 1872, were taken from the table for consideration.

The president stated the question to be, "Shall the resolution now pass, notwithstanding the objections of his honor the mayor?"

The resolution was rejected and the objections sustained by the following vote, the yeas and nays having been ordered and taken:

Yeas—None.

Nays—President Bumsted, Alderman Champney, Ginochio, McLaughlin, Meehan, Smith, Steenken, Tilden and Young.

On cross-examination:

The plaintiff proved that on December 10, A. D. 1872, the board of aldermen of Jersey City adopted the following resolution, viz:

Resolved, That the city attorney be requested to furnish his opinion, in writing, whether this board can legally accept the grant of land named in senate bill No. 99, approved April 4, 1872, ceding to the city certain lands of the State under water in Communipaw bay.

And that, on January 7, A. D. 1873, the city attorney submitted to said board the following opinion, viz:

Law office of Wm. A. Lewis, city attorney, No. 134 Hudson street (cor. York street).

To the honorable board of aldermen of Jersey City:

GENTLEMEN: The question as — the authority of your board to purchase of the State lands under tide water or otherwise ceded
24 to "the mayor and aldermen of Jersey City," by act of the legislature approved April 4, 1872, for a consideration therein provided for to be paid, and of your authority to order a warrant drawn or the issuing of a bond in payment thereof referred to the city attorney for his opinion, has been examined by me with care and consideration, and the following is submitted as my opinion thereon:

Under the present charter, passed in 1871, the powers of the board of aldermen are narrowed down and sharply defined. By said charter the powers which heretofore, under other charters, *has* been exercised by the board of aldermen of the city, have been delegated to different boards of the present city government.

Unless there is express authority in the said charter for the board of aldermen to make the proposed purchase and authorize payment, or such authority is contained in some subsequent act, or is incident to the powers of your board by implication, no such purchase could be made or payment ordered.

In my opinion the power is not incident to your board, nor do I find anything in the charter of Jersey City empowering you to make such purchase and order payment.

Next, does the act of 1872, approved April 4, which cedes the lands in question to Jersey City, authorize your board to make the purchase?

That act, section 1st, grants the lands in question to the mayor and aldermen of Jersey City. The grant is to the mayor and aldermen, as the name of the body politic and corporate known generally as Jersey City. By that name (see sec. 2 of the charter) Jersey City may hold and purchase, as well as convey, such real and personal estate as its purposes shall require, or as may be directed in the charter.

Nothing in this 1st section of the grant, then, empowers
25 the board of aldermen to make purchase, &c.

The language of the second section of the grant from the State is, "That the said mayor and aldermen, by their appropriate board" (mark the language, by their appropriate board), "shall have full control and regulation of the basin and wharves and land conveyed to them." The charter of Jersey City, by its provisions, makes the board of public works such appropriate board. (See charter, pages 23 and 24, sec. 39, divisions sixth and seventh.) These provisions give the board of works "cognizance and control" of all public bulkheads, docks, wharves, piers and bridges, and the construction and repair of the same. And section 68 of the charter gives the board of works power to regulate the use of the same, &c.

Section 3 of the grant from the State enacts that the said city

shall pay such sum of money, &c., or give bond therefor, as the consideration for said lands. This gives the board of aldermen no power to order such warrant or issue such bond, neither could your board require his honor the mayor to sign such bond if ordered by your board. If a bond is to be issued, the board of finance and taxation are the proper board to order its issue, and by section 132 of the charter, last clause of the section, it is made the duty of the mayor to sign bonds thus ordered.

The said act of April 4, 1872, grants said lands to Jersey City, by its corporate name, but restrains the city from entering upon and occupying such lands until the payment of such sum of money as the riparian commissioners may fix or the giving of bond therefor as consideration for the title granted.

The grant, then, is already made, but before it can be enjoyed by the city payment must be ordered and made.

26 By reference to section 69 of the Jersey City charter, express power is given to the board of works to purchase sites for, and purchase or construct certain buildings and such other buildings, and purchase sites for such other buildings as may be necessary for the purposes of the city. A public dock is a building which the board of works have power to construct, and by this section 69 of the charter, and the general powers of the board of works, if in their judgment they deem it necessary for the purposes of the city, in my opinion they have power to purchase a site or land whereon to build a public dock and bulkheads, &c.

I find nothing in the said grant authorizing your board as such to carry out the provisions of the grant. But I am of opinion that the board of works may, by appropriate action, make purchase of the lands in question, by accepting the grant and recommending the board of finance and taxation to issue bond therefor.

As the subject-matter is one of great public moment, I would recommend that it be referred to the board of works, and that, as your board, through its committee, has carried on all the negotiations thus far with the commissioners appointed by State, you appoint a committee of conference to lay the matter fully before the board of works so that they may avail themselves of the information and services in that behalf of your board, and may be enabled thereby to act in the premises as in their judgment the necessities and interests of the city may require.

Respectfully submitted.

WM. A. LEWIS,
City Attorney.

And that on January 7, A. D. 1873, before action was taken on the mayor's objections aforesaid, the board of aldermen adopted the following resolutions, viz:

27 Resolved, That in accordance with the recommendation contained in opinion of city attorney, the subject-matter of senate bill No. 99, entitled "An act to cede to the mayor and common council of Jersey City lands of the State now or heretofore under the tide waters of Communipaw bay, and to establish a tide-water

basin adjacent thereto," approved by the governor April 4, 1872, be referred to the board of public works for such action thereon as may be deemed necessary, and that a copy of all papers in the possession of the city clerk relating to said grant be furnished said board.

Resolved, That the committee on laws and ordinances of this board be authorized and requested to confer with the board of public works, and convey such information relating to said act as may be in the possession of the committee.

At the request of defendant it was admitted by plaintiff, that no action was taken by that board, that is, it is admitted that — a meeting of the board of public works, held January 21, 1873, that the said board of public works received a communication from John E. Scott, city clerk, transmitting copies of papers from the board of aldermen relating to the grant of land in Communipaw bay as described in the act referred to, which was received, read and referred to the committee on public buildings, and that no further action was ever taken by that board until March 2, 1885.

And the defendant proved that at the meeting of the board of riparian commissioners of New Jersey, held September 17, A. D. 1874.

"The following preamble and resolutions were adopted, and a copy of the same ordered to be filed in the office of the secretary of state at Trenton:

28 Whereas, in conformity with an act entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the waters of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, the board of riparian commissioners did reduce to writing a description of so much and such parts of said lands as were designated in said act for the purposes therein mentioned, and file a map and description thereof in the office of the secretary of state of said map and description in the office of the clerk of the county of Hudson, and did fix and determine a certain sum of money and terms of payment as a proper, equitable compensation to be paid by said city to the State for said session; and

Whereas, the said city, its mayor and aldermen have, on their part, failed to comply with the terms and conditions so fixed and determined, and with the requirements of said act; and

Whereas, the interests and convenience of the State, and of the riparian owners, render a change in such tide-water basin desirable;

Therefore, we, the commissioners appointed under the act approved March 31, 1869, entitled "Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,'" approved April eleventh, eighteen hundred and sixty-four, do hereby, in conformity with a further supplement to said act, approved April 4, 1872, make the following changes in the Jersey City tide-water basin as heretofore fixed and established, and filed in the clerk's office of the county of Hudson on the 12th day of December, 1872, to wit:

29 We do fix and establish the line of solid filling for the northerly boundary of said tide-water basin to be a line beginning at a point in the southerly prolongation of the easterly line of Warren street sixteen hundred feet southerly from the southerly side of Grand street, and running thence westerly along a bulkhead, parallel with Grand street, twenty-eight hundred (2,800) feet to the westerly boundary line of said tide-water basin as filed in the office of the secretary of state; and

We do vacate all such parts of the tide-water basin as lie northerly of the northerly boundary line as hereinbefore laid out, fixed and established; and

We do vacate all that part of the tract of land under water ceded for the purpose of a basin to the mayor and common council of Jersey City by the said act first above cited.

Commencing at a point in the centre of Van Vorst street if extended southerly and distant thirteen hundred feet southerly from the southerly side of Grand street one thousand and ninety feet; thence northerly at right angles with Grand street one thousand and ninety feet; thence northerly at right angles with Grand street eight hundred and ten feet to the centre of Morris street if extended westerly; thence easterly and parallel with Grand street to the present high-water mark on the southwesterly side of the Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street; thence southerly through the centre of Van Vorst street if extended southerly to the place of beginning."

It was also proved that no description of the lands for Jersey City referred to in the act of April 4, 1872, and map, had been filed by the riparian commissioners in the office of the secretary of state or the clerk of the county of Hudson, although one had been prepared but never signed or filed.

30 And the defendant proved the filing by said commissioners in the office of the secretary of state of New Jersey on December 12, A. D. 1874, of a copy of said preamble and resolutions of September 17, A. D. 1874, with a map or survey accompanying the same, signed by said commissioners; and proved and offered a certified copy thereof, including the map, in evidence, and which is marked Exhibit D (*pro ut* the same).

And the defendant proved and offered in evidence the grant of the State of New Jersey and the riparian commissioners, November 12, 1874, to the Central Railroad Company of New Jersey, as follows:

"To all to whom these presents shall come or may concern, Greeting:

Whereas, pursuant to an act of the legislature of said State, approved March 21, 1871, entitled "A further supplement to an act entitled 'An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,' approved April eleventh, one thousand eight hundred and sixty-four," the Central Railroad Company of New Jersey, being the owners of lands in the counties of Hudson,

Essex, Union and Middlesex, in the State of New Jersey, fronting on waters where the tide ebbs and flows, and so are riparian owners on the tide waters of this State, and are also by the written consent and contract in writing of the other riparian owners invested with the rights of riparian owners, as to their lands on tide water, and are desirous of obtaining a grant from the said State of the lands under water hereinafter mentioned, which lie in front of said lands, and did apply to the riparian commissioners, to wit, Francis S. Lathrop, Charles S. Olden, Bennington F. Randolph and
31 Thomas McKean, for a grant of the lands hereinafter conveyed;

And whereas, the said commissioners, having due regard to the interests of navigation, have agreed to grant the lands hereinafter mentioned and determined that three hundred thousand dollars is a proper compensation to be paid to the State of New Jersey for the lands hereinafter conveyed:

Now, therefore, the said State of New Jersey, by the said Francis S. Lathrop, Charles S. Olden, Bennington F. Randolph and Thomas McKean, commissioners aforesaid, in consideration of the premises aforesaid, and of the said sum of three hundred thousand dollars, duly paid by the said The Central Railroad Company of New Jersey to the said State, and receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said The Central Railroad Company of New Jersey, and to their successors and assigns forever, all those certain tracts of land hereinafter set forth and described as follows, to wit:

First. All that tract of land in Jersey City, in the county of Hudson and State of New Jersey, part of which was formerly under, but now is above the tide waters of the bay of New York or Communipaw cove, and part of which is still under the waters of the said bay or cove, described as follows:

"Beginning at a point in the ordinary high-water mark of the bay of New York or Communipaw cove, as the same existed in 1804."

At a point two hundred and twenty-five feet westerly at right angles from the westerly side of Washington street; and from thence running westerly along the southerly side of the embankment or sea wall of the Morris canal, and northwesterly and southwesterly
32 in said high-water mark, its several courses and distances to the mouth of Mill creek; thence crossing Mill creek in a straight line, to a point in the said high-water mark on the southerly side of said creek; thence southerly in said high-water mark, its several courses and distances, to the northerly line of the original grant made by the State of New Jersey to the American Dock and Improvement Company at the northerly end of the four thousand five hundred and eighty-nine feet measured by the commissioners thereto; thence easterly along the northerly line of the grant made to the American Dock and Improvement Company as aforesaid, in a course south, forty-six degrees thirty-nine minutes east, to the exterior line for solid filling, as shown on sectional map number

seven, made by the commissioners appointed under the authority of an act entitled, "An act to ascertain the rights of the State and of the riparian owners of the lands lying under the waters of the bay of New York and elsewhere in this State," approved April 11th, 1864; thence northerly along the exterior line for solid filling, as laid down on said map, to a point distant two thousand four hundred feet westerly from the southeasterly corner of the bulkhead put down by the Central Railroad Company of New Jersey, said point being in a line drawn parallel with the centre line of said Central Railroad of New Jersey; thence easterly and parallel with the centre line of said railroad two thousand four hundred feet to the southeasterly corner of the bulkhead put down by said railroad company; thence northerly along the easterly side of said bulkhead to one of the southerly lines of the grant made by the State of New Jersey to the Morris Canal and Banking Company in eighteen hundred and sixty-seven; thence westerly along said southerly line of the grant aforesaid to the centre line of Washington street produced southerly; thence northerly along the centre line of Washington street five hundred and thirteen feet; thence westerly
and parallel with Grand street, in Jersey City, four hundred
33 and forty feet; thence northerly along the easterly line of
Warren street, Jersey City, produced southerly, two hundred feet to the northwesterly corner of the grant made to the Morris Canal and Banking Company aforesaid; thence easterly and parallel with Grand street, Jersey City, one hundred and seventy-five feet to a point two hundred and twenty-five feet westerly and at right angles with Washington street, Jersey City, being the southwesterly corner of the grant made by the riparian commissioners to Matthiessen & Weichers; thence northerly along the westerly line of said grant and parallel with and distant two hundred and twenty-five feet westerly from the westerly line of Washington street, Jersey City, to the place of beginning.

And also all and singular the land under water lying between the above-mentioned exterior line for solid filling and the exterior line for piers, fixed by the commissioners appointed under said act, approved April 11th, 1864, and shown on a map made by the commissioners dated October 1st, A. D. 1874, and to be filed in the office of the secretary of state of New Jersey showing the changes made in the exterior line for piers between the southeasterly pier of the Central Railroad of New Jersey, and the northerly line of the grant to the American Dock & Improvement Company, which said new exterior pier line is described as follows:

Commencing at a point in the Hudson river or bay of New York in the southerly line of the grant made to the Morris Canal and Banking Company by the State of New Jersey, in the year eighteen hundred and sixty-seven, distant four hundred feet easterly at right angles from the easterly side of the bulkhead put down by the Central Railroad Company of New Jersey; and from thence running southerly and parallel with the easterly side of said bulkhead to a point in line with the southerly line of said bulkhead, if produced

easterly; thence curving to the right with a radius of eight
34 hundred feet a distance of nine hundred and fifty feet; thence on a tangent a distance of one thousand one hundred and fifteen feet; thence curving to the left with a radius of three thousand five hundred and sixty feet, a distance of two thousand seven hundred feet to the exterior line for piers established by the commissioners appointed under the act approved April 11, 1864, thence along said exterior line for piers until it intersects the northerly boundary line of the grant made to the American Dock and Improvement Company, produced easterly to said point; provided always, the said land under water between the said exterior line for solid filling and said exterior line for piers is to be used only for the purpose of a pier or piers constructed or to be constructed therein.

And likewise any and all the lands under water lying in front of the above described and bounded by the northerly and southerly lines thereof, to any points to which the said line for solid filling and exterior line for piers respectively may hereafter be legally extended, the same to be used for solid filling and piers respectively, agreeably to the terms of such extension, as tracts of land under water that lie below high-water line within the exterior lines mentioned in the eighth section of said application mentioned, and for which the said applicants desire a grant as within.

Excepting out of the same:

First. All that tract of land under the tide waters of the bay of New York or Communipaw cove, in Jersey City, in the county of Hudson and State of New Jersey, described as follows:

Commencing at a point in the easterly line of Warren street (if produced southerly) distant one thousand eight hundred feet southerly from the southerly line of Grand street in Jersey City,
35 which said point is at the southwesterly corner of the grant made to the Morris Canal and Banking Company in the year 1867 and from thence running westerly and parallel with Grand street twenty-eight hundred feet: thence northerly and at right angles with Grand street two hundred feet; thence easterly and parallel with Grand street twenty-eight hundred feet to the easterly line of Warren street; thence southerly along the easterly line of Warren street extended southerly two hundred feet to the place of beginning; and

Second. Excepting whatever premises and privileges may have been granted to the New Jersey West Line Railroad Company, by act of the legislature, entitled "A supplement to an act entitled 'An act to charter the Passaic Valley and Peapack Railroad Company,' approved March 29, 1865," approved February 20, 1872, and the grant made by the riparian commissioners in pursuance thereof in which said grant the land and privileges therein granted are described as—

"All that tract of land in part under the tide and in part heretofore under tide water of the bay of New York or Communipaw cove, in Jersey City, in the county of Hudson and State of New Jersey, described as follows:

"Commencing at a point in the east line of Warren street ex-

tended southerly, at the southwesterly corner of the land granted to the Morris Canal and Banking Company by an act, in eighteen hundred and sixty-seven, and from thence running easterly and parallel with Grand street, in Jersey City, twenty-eight hundred feet; thence northerly at right angles with Grand street five hundred feet; thence westerly and parallel with Grand street to
36 the original high-water mark on the west side of Communipaw bay or cove; thence returning to the place of beginning and running easterly and parallel with Grand street four hundred and forty feet along one of the southerly lines of the grant made to the Morris Canal and Banking Company as aforesaid, to the centre line of Washington street extended southerly; thence southerly along said centre line of Washington street extended southerly (which is one of the westerly lines of the said grant to the Morris Canal and Banking Company), and at right angles with Grand street five hundred and thirteen feet; thence westerly and parallel with Grand street about thirty-six hundred and fifty feet, more or less, to a point in line with the centre line of Jersey avenue, in Jersey City, if the same was extended southerly to said point, thence southwesterly in line with the said centre line of Jersey avenue one hundred and sixty-five feet; thence westerly and parallel with Grand street, in Jersey City, about five hundred feet, more or less, to the original high-water mark on the westerly side of Communipaw bay or cove; thence northeasterly along said original high-water mark of Communipaw bay or cove to the mouth of Mill creek; thence crossing said creek in a straight line and continuing northeasterly along said original high-water mark until it intersects the end of the third course of this tract. Together with all and *the* singular the tenements and appurtenances thereunto belonging, and also all the estate, right, title, interest, possession, claim and demand whatsoever, as well as at law as in equity of the said State, of, in and to the same, with the appurtenances and the remainder and remainders, reversion and reversions, rents, issues and profits thereof. And also
the rights, liberties, privileges and franchises, to improve and
37 otherwise use, appropriate and control the said premises mentioned and created in and by any part of the said act of the legislature."

Second. All that tract of land under the tide waters of the bay of New York in Jersey City (Cavan point) property, &c.

Third. All that tract of land under the tide waters of the bay of New York in the city of Bayonne, &c.

Fourth. All that tract of land under the tide waters of the bay of New York in the city of Bayonne, &c.

Fifth. All that tract of land under the tide waters of the Kill Von Kull in the city of Bayonne, &c.

Sixth. All that tract of land under the tide waters of the Kill Von Kull in the city of Bayonne, &c.

Seventh. All that tract of land under the tide waters of Newark bay in the city of Bayonne, &c.

Eighth tract. All that tract of land under the waters of Newark

bay and the Arthur Kill, or the Staten Island sound, in the city of Elizabeth, in the county of Union, and State of New Jersey, &c.

Ninth tract. All that tract of land in the city of Elizabeth, in the county of Union and State of New Jersey, part of which was formerly under but now is above the tide waters of the Arthur Kill, or the Staten Island sound, and part of which is still under the tide waters of said sound, &c.

Tenth tract. All that tract of land in the county of Union and State of New Jersey under the tide waters of Newark bay, &c.

Eleventh tract. All those two tracts of land under the tide
38 waters of the Arthur Kill, or Staten Island sound, in the town of Woodbridge, in the county of Middlesex and State of New Jersey, &c.

Twelfth tract. All that tract of land under the tide waters of the Raritan river in the city of Perth Amboy, county of Middlesex and State of New Jersey, &c.

And also all those parcels of land in the streams which the railway of the Central Railroad Company of New Jersey may cross, which are under tide waters and within the lines of solid filling now or hereafter to be established according to law, and which lie or may lie within the limits of the roadway of the said Central Railroad Company as now located, or as the same may be hereafter located under the powers now conferred upon them by their charter and supplements, it being the intent hereof that as to all such lands under water as shall lie within any location hereafter to be made, this grant shall take effect only when and so soon as such new location or roadway shall have been lawfully made.

Together with all and singular the hereditaments and appurtenances thereunto belonging, and rights of the said State in said lands.

To have and to hold, all and singular the above granted and described lands and premises unto the said The Central Railroad Company of New Jersey, and to their successors and assigns forever.

And as the premises included in said grant to the New Jersey West Line Railroad Company, it is agreed as follows:

That in case the said State had not the right and power to vest the title in the said New Jersey West Line Railroad Company, which is and by the ninth section of the act approved February 29th, 1872, entitled "A supplement to an act entitled 'An act to charter the Passaic Valley and Peapack Railroad Company, approved March twenty-ninth, eighteen hundred and sixty-five, and in and by the
aforesaid grant in pursuance thereof provided to be vested in
39 that company, which right and power the said State claims to have had, and the Central Railroad Company of New Jersey claims that the said State did not have; then, and in such case, the said State shall, for the consideration of one dollar, and for no other or further consideration to be paid to the State therefor, release to the Central Railroad Company of New Jersey, free from any incumbrances thereon by mortgage given to the State, all its right, title and interest in said premises mentioned and described in

said ninth section of said act, and in said grant to said New Jersey West Line Railroad Company.

In witness whereof, the said State has caused these presents to be sealed with the great seal of the State, and to be subscribed by Joel Parker, the governor of said State, and by the said commissioners, and to be attested by Henry C. Kelsey, the secretary of state thereof, this twelfth day of November, A. D. one thousand eight hundred and seventy-four.

[L. S.]

JOEL PARKER, *Gov.*
FRANCIS S. LATHROP.
CHS. S. OLDEN.
BENNINGTON F. RANDOLPH.
THOS. McKEEN.

Witness:
ROBT C. BACOT.

Attest: HENRY C. KELSEY,
Secretary of State."

Which grant was duly proved Nov. 14, 1874, and recorded in the register's office of the county of Hudson, New Jersey, the 27th day of September, A. D. 1875, in Book 289 of Deeds, page 294, &c., (*pro ut* the same).

40 And the defendant proved and offered in evidence the written consent of the American Dock and Improvement Company, of the Central Land and Improvement Company of Elizabethport, and New York Ferry Company, and John Taylor Johnston, that the grant should be made to the Central Railroad Company of New Jersey, according to the act conferring that power upon them.

(*Pro ut* the same.)

and also proved the payment of the three hundred thousand dollars mentioned as the consideration of the grant, to the treasurer of the State of New Jersey.

The defendant made the following proof (Jacob M. Clark, a witness familiar with the premises, being on the stand), and which proof is given with questions and answers, to insure perfect accuracy:

Direct examination by Mr. WILLIAMSON:

Q. What is your profession?
A. Civil engineer.
Q. How long have you followed that profession?
A. Since 1845.
Q. During that period have you been in the employ of the Central Railroad Company of New Jersey and of the American Dock and Improvement Company as engineer?
A. I was, from the fall of 1862 down until after this suit was brought.

Q. Did you locate the railroad from Elizabethport to the Hudson river?

A. I ran the final lines of location under the direction of Colonel James Moore, who was then chief engineer of the company.

Q. Did you make yourself familiar at that time with the surroundings of Communipaw bay?

A. I did.

Q. How far over the bay was the road constructed; that is,
41 how far was it from the upland down to the channel of the river?

A. Something over a mile.

Q. In what way was it constructed over the bay?

A. The road was first built from the shore to the ferry terminus upon a pile bridge.

Q. When was that commenced?

A. That was commenced in 1863, in July, I think.

Q. Have you a map here showing the condition of Communipaw bay as it was when you made that location?

A. I have. This map is a copy of a map attached to the riparian commisioners' report of 1865. It shows the condition of the shore line as existing when I first knew it.

Q. Tell us what that map is.

A. That is a copy of section 6 of the map attached to the riparian commissioners' report to the legislature, dated 1865.

Q. The other section is run south of that, or north of it?

A. This does not go down to Caven point, but the map from which it was copied shows the shore down to Caven point. This is a section.

Q. Produce the other section.

A. (Producing a map.) The map I now produce is a larger map. It shows the same thing and more down to Caven point.

Q. What does this map purport to be?

A. It purports to be section 7, showing the lay of lands lying under the waters of the Hudson river and the bay of New York and lands adjacent thereto, and is accompanying the report of the riparian commissioners to the legislature in 1865, and is certified by Mr. Bacot, the engineer. This is the commissioners' map.

Mr. COLLINS: These are the commissioners' maps; I suppose they are public records, and I assume they were in when the report went
42 in. Of course, we are not to be understood as conceding that any such thing existed as that map shows. You see it is a projected basin, but the offer is to show the shore line of Communipaw bay. We do not admit that any such state of affairs existed as is depicted upon the maps.

Mr. WILLIAMSON: They are used now simply to show the shore line.

Q. What I want to know is, were there at that time any improvements around Communipaw bay?

A. There were no improvements along the shore; no reclamation nor wharves from the neighborhood of the sugar-house until

you come to Communipaw lane, and there was the remains of an old wharf in 1862.

Q. Show us a map showing the situation of the cove in April, 1872, the date of the grant to Jersey City.

A. This map, marked 1872, is the nearest to the date of April, 1872, that I am at present able to fix. It is from a survey made March 10th of that year, and as it is explained in the legend on the map the strips covered Indian red are bulkheads, and the outside red round lines show the shore from Van Vorst street to Communipaw. The ripa which afterwards became described in the grant to the Central railroad, and the brown color shows the extent of filling at that time, dated March 10, 1872, and the Indian-red blocks show the cribs filled with stone, and the yellow strips and spaces at the eastern margin of the map shows the platforms and wharves. It is intended to show the state and extent of the reclamations made by the Central Railroad Company of New Jersey and the American Dock and Improvement Company down to that date.

Q. Can you tell us the approximate amount of expenditure that has been made by these different companies up to that date in Communipaw bay?

43 The COURT: You do not propose to prove any expenditure on the *locus in quo* up to that date, do you, chancellor?

Mr. WILLIAMSON: No.

Q. There was no improvement made upon the *locus in quo* up to that time?

A. No, there was no reclamation up to 1872 within the lines of the *locus in quo*.

Q. Have you a map showing the situation of the cove in November, 1874?

A. I have.

Q. Now, will you produce the map showing the situation of Communipaw bay at the time of the said grant to the Central Railroad of New Jersey?

A. I have such a map and I produce it.

Q. Explain that map.

A. This is a companion map to what I showed before bringing the state of things down to about the date of the grant, down to November, 1874. This survey was made a few days after the grant was made. The decided red line shows boundaries described in the grant of the riparian commissioners to the Central Railroad of New Jersey, dated November 12, 1874, so far as the limits of this paper illustrate it. The places tinted light brown show solid filling, reclaimed land, which was formerly under water. The strips in Indian red show bulkheads and cribs, and the wharves and piers are also shown. The tide-water basin as established by the paper just put in of September 17, 1874, is designated by blue lines on the margin. The west-line grant is bordered in red. The grant to the Morris Canal and Banking Company, of 1867, is tinted green. To the north is shown the Morris canal and the adjacent portions of the streets in Jersey City.

(By the COURT:)

Q. This brown line indicates the outline of the land in dispute?

A. Yes, this *locus in quo* comes in afterward, so I have marked it at the red-chalk line.

(The COURT:)

44 Q. There seems to be at that time at the end of Henderson street filled in into that *locus in quo.*

A. There was a little strip filled in range with Henderson street south of the canal that comes within the *locus in quo.* This decided red line is the boundary described in the grant to the Central R. R. Company so far as this paper illustrates it.

Q. Mark with red lead pencil the grant to Jersey City.

A. It is marked with red chalk; that is, the grant to the city of Jersey City.

Exhibit D 1 on the part of the defendant is a copy of section 6, map of 1865, showing the survey of land under water in the Hudson river and New York bay by the Bacot map B.

Exhibit D 2 on the part of the defendant in section No. 7, map showing the survey of lands lying under water in the Hudson river and the bay of New York and lands adjacent thereto, and accompanying the report of the commissioners to the legislature of New Jersey, 1865, being certified by Mr. Bacot. There being two of them, and they are both marked Exhibit D 2.

Exhibit D 3 on the part of the defendant is a map of 1872, March 10th, referred to by the witness.

Exhibit D 4 on the part of the defendant is the certified copy of the vacation of lands under water ceded to the mayor, etc., of Jersey City, a part of the tide-water basin. The certificate of the secretary of state is dated November 5, 1888. The certificate of the riparian commissioners is dated September 17, 1874, and *is* connected with it, is a map and is part of this Exhibit D 4.

Exhibit D 5 on the part of the defendant is the grant from the State of New Jersey to the Central Railroad Company of New Jersey, bearing date November 12, 1874.

Exhibit D 6 on the part of the defendant is the consent of the American Dock and Improvement Company and other riparian owners.

45 Exhibit D 7 on the part of the defendant is a map of the condition of things in November, 1874.

Q. The map of 1874 shows a strip of reclamation on the other side of the Morris canal, opposite Henderson street. By whom was that made?

A. That was made by the American Dock and Improvement Company.

Q. Have you a map showing the situation of the *locus in quo,* and the land reclaimed in and around it up to the year 1886?

A. Yes, I have.

(The COURT:)

Q. When was that?

A. It was anywhere from 1885 to 1886, it will be about the same thing, the suit had not been brought at that time and it is the condition of affairs at about the time it is supposed the suit was brought. Like the other maps, it shows by the legends and colors what it means. The red line is the boundary of the grant, and the brown is the space filled with earth which was formerly under tide water; the Morris canal grant in green, and the Indian red bulkheads, tide-water basins in blue lines. The *locus in quo* is bordered by lilac.

This map last referred to is offered in evidence and is marked Exhibit D 8 on the part of the defendant.

Mr. COLLINS: These dotted lines embraced in the George W. Edge piece are disclaimed by the plea.

Mr. WILLIAMSON: We offer in evidence an act to incorporate the American Dock and Improvement Company, approved April 11, 1864, and I read the fifth and sixth sections: (the whole act is in evidence; *pro ut* the same.)

"5. And be it enacted, That as soon as the said company shall be organized, it shall be authorized to receive conveyances for
46 the lands now owned as aforesaid between the south line of the lands of 'The Central Railroad Company of New Jersey,' where it intersects the New York bay and Kavan point, and to hold and execute all instruments and conveyances necessary for the purchasing, leasing or selling of such property; and the said company are hereby authorized to purchase and hold any lands adjoining or near the above-mentioned tracts which they may deem necessary for improving and enlarging said property, and to pay for all lands with the shares of its capital stock, at such price as the company may deem best for its interest; provided, they shall not hold at any time over two hundred acres above the present high-water mark, in addition to the tracts mentioned in this section.

"6. And be it enacted, That the said company shall be, and hereby are, authorized to improve all and every portion of the said lands under water, held or purchased by them as aforesaid, by erecting buildings and laying out said lands into lots, streets, squares, docks, lanes, alleys or other divisions, and by levelling, grading, raising or tunnelling the said land, streets, lanes and alleys; and they shall have liberty to fill up, raise, occupy, possess and enjoy as their own property, all lands covered with water which they may hold or purchase, or which may lie in front of any lands which they may hold or purchase, and may build, enlarge or improve, or sell and convey to others to improve, all and any land or lands under water, wharf or wharves, bulkhead or bulkheads, piers, slips, and other structures which they may deem necessary for commercial, shipping or other purposes; provided, that in carrying out the provisions of this act they shall not injure the navigation of the Hudson river, nor interfere with the legal rights of others, nor build out

beyond *boyond* the easterly line of Hudson street, Jersey City,
47 extended southerly, or such other exterior line as may be fixed by law; and that the southerly line of the said improvements into the bay, shall be on a line commencing on the southerly side of Kavan point, at the boundary line of the lands of late belonging to Stephen B. Vreeland, and at the point where said boundary line strikes the shore of New York bay, and from thence running south forty-six degrees and thirty-nine minutes east to the channel of the Hudson river; provided, that the northerly line shall be parallel to and with the said southerly line; and provided always, that the said company shall pay for the oysters planted, or shall give them at least one year's notice to remove the same; and in case the value of such oysters cannot be agreed upon, then, in such case, either party, upon twenty days' notice to the other party, may apply to the court of common pleas of the county of Hudson, whose duty it shall be to appoint three disinterested freeholders of said county to appraise the same, whose report, or the report of any two of them, made in writing to the said court, shall be final and conclusive; and in determining said value, the said appraisers shall be governed by the like rules, as arbitrators; and provided further, that nothing contained in this act shall be so construed as to give to the said company any power to make any improvement whatever upon the tract of lands under water in New York bay, heretofore granted to Aaron Ogden, without the consent in writing of the said Aaron Ogden, or his legal representatives."

Mr. WILLIAMSON: The act to which I have just referred requires a payment to be made to the State of New Jersey, and I offer in evidence the receipt and certificate of the treasurer of New Jersey to the The American Dock and Improvement Company for the payment of the sum of money particularly mentioned and re-
48 quired to be paid in one section of this charter. It is $25 a foot mentioned. The aggregate sum is mentioned also $114,725, dated March 11, 1868.

This receipt is marked Exhibit D 9 on the part of the defendant, and is proved.

(*Pro ut* the same.)

Q. A map has been shown showing the reclamation made at the *locus in quo*, and in reference to it, between the year 1874—in April of that year—and the time of the commencement of this suit, and you pointed out on that map those reclamations. I did not ask you the amount of expenditures in making those reclamations and *and* improvements?

A. No.

Q. Will you tell us?

Mr. COLLINS: We object to the question as irrelevant.

The COURT: We will take it. It relates to the *locus in quo*.

A. The reclamation of the whole tract north of the Great basin, which embraces the *locus in quo*, and in reference to that tract as separated from any other, made between November, 1874, and 1886,

cost about $127,000, as near as I can get at it. That is what was done on that tract, and in reference to the whole tract embracing the *locus in quo*.

(The COURT:)

Q. Can you tell what proportion of that sum was actually expended on the *locus in quo*?

A. Within the *locus in quo*, as near as I can calculate, the reclamation made between those periods must cost about $35,000. That is an approximate estimate. It was earth filling and has to be approximated.

Q. Will you produce the deeds for the riparian rights, and a map which shows the riparian property?

Witness produces deed and map.

49 Mr. WILLIAMSON: We now offer in evidence the deeds showing the grant of the riparian rights around the cove, to the Central Railroad Company of New Jersey.

Mr. COLLINS: There is a great amount of documentary title tending to show the title around this horseshoe curve. We think it is irrelevant to show this entire curve from the sugar-house to Kavan point. All that can be involved is just where the *locus in quo* binds on the shore. As to the run round of that horseshoe toward Communipaw, we haven't any special knowledge about it. They do produce deeds purporting to give them title, that is, the last deeds; they do not produce any chain. But just where this tract touches the land, it is our understanding that they haven't any title, and I think, as to that, they ought to go into it fully. What they produced before, as I recall the bill of particulars, is a deed from Gregory. I am perfectly willing that this bill of particulars, those deeds in there, or excerpts of them, should be offered as the original deeds, without producing the records.

Mr. WILLIAMSON: Suppose we start and go on a little ways, then we'll see our way clear. The object is to save time. With regard to the relevancy of the matter, the court will not decide that now. There is a very important question, that is, the rights which were acquired under the American Dock and Improvement Company, and we cannot get the benefit of that unless we show that these lands were near to and adjacent to and come under that section which authorized them to buy all the lands adjacent to that property.

The COURT: Take your own course about it. I understand Mr. Collins is willing to admit that the printed books have excerpts from genuine deeds in your hands.

50 Mr. WILLIAMSON: I only want to get the matter fully before the court.

Mr. EDWARDS: We want to reserve the right to use the entire deed if it becomes necessary in the matter.

Mr. WILLIAMSON: The stenographer need not take them down, and I will start off in a way that will perhaps expedite the case better. And if we see any better way we will change it.

Q. You have a map before you showing the riparian owners round this cove from Kavan point up to what point in Jersey City?
A. To the sugar-house property near Washington street.

Mr. WILLIAMSON: We offer in evidence the following deeds, viz:

"The Adirondack Steel Manufacturing Company to Edward W. Kingsland and David Smith, as joint tenants in trust, and the Central Railroad Company of New Jersey, dated November 19th, 1863."

Q. That is the deed before you. Point out to the court where it is on the map?
—. (Indicating on the map to the court.) It is the property marked ripa opposite to the large figure one on the map.
Q. In front of the entire block?
A. In front of the part of the block west of the sugar-house property, block 49. (Witness points out the sugar-house property.) This is the property conveyed by that deed.

A deed from Josiah H. Gautier and wife and others to Edmund W. Kingsland and David Smith, trustees, and the Central Railroad Company of New Jersey, dated August 25, 1863.

Q. Where is that?
A. (Indicating.) The ripa opposite the large figure two on this map.

A deed by James W. McDermott and others, auditors in attachment in the circuit court of Hudson county, to the Central Railroad Company of New Jersey, dated July 18, 1863.

51 —. Point out that.
A. It is ripa opposite the large figure three.

Mr. COLLINS: As to that we wish to interpose an objection to its introduction unless the prior title be also produced.
The COURT: I will admit the deed.

A deed by Horace Southmayd and wife to the Central Railroad Company of New Jersey, dated May 1, 1868.

—. Point out that on the map.

The WITNESS: That relates to the same piece of ripa three.
Mr. COLLINS: To that we make the same objection.

A deed by Dudley S. Gregory and wife and others to the Central Railroad Company of New Jersey, dated November 1, 1863.

—. Point out that.

The WITNESS: That relates to the ripa opposite the large figure four.
Mr. COLLINS: As to that we make the same objection.

Also deed by George W. Gregory and others, executors of Margaret Gregory, to the Central Railroad Company of New Jersey, dated January 9, 1864.

The WITNESS: That relates to the same property indicated by figure four.

A deed by Abby E. Henderson, guardian, to the Central Railroad Company of New Jersey, dated January 14, 1864.

The WITNESS: That relates to the same piece of ripa marked by the figure four.

A deed by Abbey Elizabeth Henderson, to the Central Railroad Company of New Jersey, dated January 9, 1864.

The WITNESS: It relates to the same piece of ripa four.
52 Mr. COLLINS: The same objection.

A deed by Alexander H. Wallis, guardian, to the Central Railroad Company of New Jersey, dated Aug. 20, 1868.

The WITNESS: It relates to the piece of ripa, and also the fast land between the ripa and the canal, which is marked five on this map.

Mr. COLLINS: Same objection.

Deed by Adele De Wint, to the said Central Railroad Company of New Jersey, dated August 20, 1868.

Mr. COLLINS: Same objection.

The WITNESS: It relates to the same property five.

Deed by George W. Edge and others to Edmund W. Kingsland and David Smith, and the Central Railroad Company, dated July 1, 1863.

The WITNESS: It relates to the property marked six on this map.

Deed by Benjamin O. Edge to Edmund W. Kingsland and David Smith, trustees of the second part, and the Central R. R. Co. of N. J., dated July 1, 1863.

The WITNESS: That relates to the property marked seven on the map.

A deed by Annie M. Corwin to Edmund W. Kingsland and David Smith, and the Central Railroad Company of New Jersey, dated July 1, 1863.

The WITNESS: It relates to property marked with the large figure eight.

A deed by Charles G. Sisson and wife to the Central R. R. Co. of N. J., dated January 27, 1863.

The WITNESS: It relates to the property marked in large
53 figures eleven on the map. And also property farther south, marked fourteen, and also the property still farther south marked seventeen.

A deed by Stephen S. Southard and his wife to the Central R. R. Co. of N. J., dated March 24, 1864.

The WITNESS: It relates to the property marked ten on this map.

A deed by Stephen S. Southard and wife to the Central R. R. Co. of N. J., dated March 24, 1864; this is another deed for other lands.

The WITNESS: That relates to the same plot marked ten, conveying other lands.

A deed by Edward Evans and wife to the Central R. R. Co. of N. J., dated April 7, 1866.

WITNESS: It relates to the same range of lots, conveying other lots.

Deed by Benjamin F. Woolsey to the Central R. R. Co. of N. J., dated October 23, 1865.

The WITNESS: It relates to the same range of lots marked ten.

A deed by Joseph W. Savage and wife to the Central R. R. Co. of N. J., dated May 3, 1864.

WITNESS: It conveys other lots in the same range of lots marked ten.

Deed by Morris K. Jessup and wife to the Central R. R. Co. of N. J., dated March 30, 1864.

WITNESS: It relates to the same range of blocks marked ten.

Deed by William H. Rogers and wife to the Central R. R. Co. of N. J., dated August 20, 1864.

A. It relates to the same range of blocks.

Deed by William H. Rogers and wife to the Central R. R. Co. of N. J., dated August 20, 1864.

54 WITNESS: That relates to this same Hill and Townsend tract. Without going into it I can't say which range of blocks, but it relates to the same tract, the Hill and Townsend tract. Whether the lots were under water or above at the time they were conveyed, I can't say without going into detail.

Deed from Peter H. Zabriskie and wife to the Central Railroad of New Jersey, dated March 2, 1865.

WITNESS: The Zabriskie deed relates to the range of blocks marked ten.

Deed from Peter H. Zabriskie and wife to the Central R. R. Co. of N. J., dated March 2, 1865.

WITNESS: That relates to the same range of blocks marked ten.

Deed from George Worley and wife to the Central R. R. Co. of N. J., dated October 13, 1865.

WITNESS: That relates to the same Hill and Townsend property, as it is called, 9, 10, 11, and probably within 10.

Deed from Clara Durgin, executrix, and her husband to the Central R. R. Co. of N. J., dated July 22, 1863.

WITNESS: It relates to the range of blocks marked ten.

Deed from Clara Durgin, executrix, and her husband to the Central R. R. Co. of N. J., dated July 22, 1863.

WITNESS: It relates to the same range of blocks marked ten.

Deed from Charles G. Sisson and wife to the Central R. R. Co. of N. J., dated March 23, 1865.

55 WITNESS: It relates to the same range of blocks.

Deed from Isaac Burnap to the Central R. R. Co. of N. J., dated July 1, 1876.

WITNESS: That relates to the same range of blocks marked ten.

Deed from Thomas B. Decker and wife to the Central R. R. Co. of N. J., dated July 1, 1876.

WITNESS: That is a lot dotted, but it relates to the same range.

Deed from Jane Van Horne to the Central R. R. Co. of N. J., dated May 27, 1863.

WITNESS: That relates to the property marked 12 on the map.

Mr. WILLIAMSON: We offer in evidence an agreement between Jane Van Horne and the Central R. R. of N. J., dated May 27, 1863, recorded June 1, 1863, in Book 99 of Deeds of Hudson County, on page 500, &c.

WITNESS: That relates to the same property marked twelve on the map.

An agreement between Jane Van Horne and the Central R. R. Co. of N. J., dated October 24, 1865.

WITNESS: So far as the ripa is concerned it refers to the same No. 12.

Deed from Jane Van Horne to the Central R. R. Co. of N. J., dated May 31, 1872.

WITNESS: That is a conveyance and an adjustment in pursuance of the former agreement, which relates to this same ripa 12.

Deed from John Arbuckle and wife and others to the American Dock and Improvement Company, dated October 2, 1866.

WITNESS: It relates to the property marked 15.

56 Deed from Henry W. Minugh and wife to the Central R. R. Co. of N. J., dated April 18, 1868.

Mr. COLLINS: The deed from Jane V. Horne in 1872 is after the grant from the State, and we object to that. The grant was in March, and this deed was in May. We specially object to that.

The WITNESS: The deed from Minugh and wife is to the property marked 16 on the map. This was conveyed to the Central R. R. Co.

A deed from Abraham Simons and wife to the American Dock and Improvement Company, dated October 11, 1867.

WITNESS: That relates to property designated 17 on the map.

Mr. WILLIAMSON: There is a sufficient answer to the objection of Mr. Collins. The deed refers to a prior deed; it is merely to carry out an agreement, which agreement she was bound to carry out.

Deed by John A. Bowker and wife to the American Dock and Improvement Company, dated October 11, 1867.

WITNESS: That relates to a portion marked 17.

Q. In calling attention to these deeds you have used a map for that purpose, and pointed out the several tracts to the court. Is that map now before you?

A. It is.

The map is offered in evidence by the defendant and it is marked Exhibit D 10 on the part of the defendant.

Deed from the Central Railroad Company of New Jersey to the American Dock and Improvement Company, dated September 24, 1866. Have you a map showing that property?

WITNESS: I can describe that property from this same map that is now before me.

Q. Please describe it and show it to the judge.

A. This conveys certain of this property which has already
57 been gone over in other deeds to the American Dock and Improvement Company from a point a little ways south of the centre line of the Central railroad as it is marked here (indicating) down to Van Horne creek which is marked here (indicating) as the northeast boundary of the original grant to the American Dock and Improvement Company, blocks 14, 15, 16, 17 on the map. I notice that the Sisson deed which I had referred to in plot 11, and one or two other plots also covers plot- 14, 17 and 9, and the other deeds which I spoke of in detail related to this Hill and Townsend tract really, as my memory comes to me with reference to plot 10.

Deed from Central Railroad Company of New Jersey to the American Dock and Improvement Company, dated October 15, 1866.

WITNESS: This deed conveys to the dock company the shore property in effect all the way from the sugar-house round to the point before spoken of in the September deed, property which is embraced in these deeds which we have gone over in detail, conveyed it to the dock company, so as to connect; it connects with the former deed.

Mr. COLLINS: I suppose any objection we made to the original deeds will be carried along to the devolution of title downward without our repeating them?

Q. Have you before you an agreement between the Central Rail-

road Company of New Jersey and the American Dock and Improvement Company, dated October 15, 1866?

A. I have.

Defendant offers the agreement in evidence.

(*Pro ut* the same.)

58 Deed from the American Dock and Improvement Company to the Central Railroad Company of New Jersey, dated October 15, 1866.

WITNESS: It conveys from the Dock and Improvement Company to the Central R. R. Co. this tract (indicating) on each side of the centre line from the shore eastward to what is now the ferry, and part of the way a strip over 500 feet wide for a short distance to a range with Jersey avenue, and thence over here more that a thousand feet back to the centre of the river.

Deed from the Central Railroad Co. of New Jersey to the American Dock and Improvement Company, dated June 29, 1872.

WITNESS: This conveys to the Central R. R. Co. triangular tract northerly of the plot conveyed by the former deed and easterly of Jersey avenue extended, as marked by the full lines on the map, and the red lines (indicating) that tract of land. And also a triangular tract of land under water to the southward of the 1,080 feet strip represented also by the red border on the south and the old boundary line on the north, extending out to the channel.

Deed from the American Dock and Improvement Company to John Taylor Johnson, dated December 31, 1872.

WITNESS: This conveys to Mr. Johnston certain of the lands under water north of the tract conveyed by the dock company to the Central railroad along and around the basin which the company was then building to the shore, round the north side of the cove, so much of that land round the basin here (pointing) and to the shore, as was then vested in that company.

Deed from the Central Railroad Company of New Jersey to John Taylor Johnston, dated December 30, 1872.

WITNESS: It is the same property.

59 A deed from the American Dock and Improvement Company to the Central R. R. Co. of N. J., dated March 3, 1873.

WITNESS: This begins at the southerly line of the tract conveyed by the deed of October, 1866, in range with the centre line of Jersey avenue extended, and then follows the boundary with the exterior line, thence south along the exterior line to a point bearing certain directions, thence to the beginning point.

Mr. COLLINS: We object to these latter deeds, which purport to convey lands under water, quite a number of them. We object to them as any evidence of title.

Q. Have you a paper executed by John Taylor Johnston to the

American Dock and Improvement Company, dated December 10, 1875?

A. I have.

Deed executed by John Taylor Johnson and wife to the American Dock and Improvement Company, dated January 1, 1881.

WITNESS: This deed relates to the same property formerly conveyed by the deed referred to a little while ago to Mr. Johnston.

A deed executed by the Central Railroad Company of New Jersey, and Francis S. Lathrop, as receiver of said company, to the American Dock and Improvement Company, dated August 20, 1881.

Witness points out the boundaries of that property.

Mr. WILLIAMSON: If you make any objections to the authority for the making of that deed, I will say to you that all that recital is in the deed to show by what authority they make it.

Mr. COLLINS: There is a copy of the order in the Hudson terminal case. We will not object. It can be offered in evidence
60 and copied from that case when this case is made up. Any formal proof of documents that we all know exist we will not make any trouble about.

The WITNESS: This deed from the Central R. R. Co. and Receiver Lathrop to the American Dock and Improvement Company purports to convey to the dock company so much of the lands formerly or then under water granted by the State to the Central R. R. Co. by grant of November, 1874—conveys to the dock company so much of those lands as lies between the old dock company's grant Kaven point to the southward, and between the old dock company's charter property and the Central railroad property to the north, and to the northward of the railroad company's, and from there to Jersey City. By Jersey City I mean the shore line.

A deed executed by Edmund W. Kingsland and David Smith to the American Dock and Improvement Company, dated October 7, 1871.

WITNESS: That purports to convey pursuant to the trust deed of the property plotted out in there to the Central Railroad Co., by virtue of that trust deed originally conveyed to these trustees, Kingland and Smith, by the Adirondack Steel Company, marked on this map one.

A deed by George W. Edge to the Central Railroad Company of New Jersey, dated June 9, 1875.

WITNESS: It convey- the property under water called block 28, and marked small figures 30 on the map, opposite the ripa, marked with a large figure 6.

A deed by Edmund W. Kingsland and David Smith, trustees, to the Central R. R. Co. of N. J., dated June 9, 1875.

61 WITNESS: It is a conveyance from Kingsland and Smith, trustees, for the same block marked in the circle 28.

A deed from Delos E. Culver and Edgar B. Wakeman to the Central R. R. Co. of N. J., dated August 26, 1876.

WITNESS: That is a deed shown on the map for lands under water south of the red line opposite the name "Delos E. Culver," and relating to the ripa marked in large figure six.

Q. A deed from Edmund W. Kingsland and David Smith, trustees, to the Central R. R. Co. of N. J., dated August 26, 1876?

WITNESS: That is a deed for the same property referred to in the Culver deed.

Deed from Benjamin Edge and his wife to the Central R. R. Co., dated June 7, 1876.

WITNESS: That is a deed for part of the block under water marked 49 in a circle, south of the red border and opposite the ripa large figure seven.

A deed from Edmund W. Kingsland and David Smith, trustees, to the Central R. R. Co. of N. J., dated June 7, 1876.

WITNESS: That is a deed of the same property as in the Edge deed, which I have just pointed out.

Q. As you have pointed out on the map the premises to which your attention has been called, have you had before you the deeds conveying those premises?

A. I have.

Q. And you now have them there before you?

A. I have.

Mr. WILLIAMSON: Consider them all offered in evidence.

62 Mr. COLLINS: Subject to objections such as we have made as to their effect. No objection as to their execution.

Q. Have you before you an agreement between the Central Railroad Company of New Jersey and the Morris Canal and Banking Company, dated November 19, 1863?

Mr. COLLINS: We object to it as irrelevant. It was an agreement between those two corporations to parcel out between themselves certain lands which they did not own, and, as I understand, it became obsolete; never carried into effect. It does not touch fast lands anywhere, as I understand it.

The COURT: We will receive it for whatever use it may have.

The agreement is offered in evidence and is marked Exhibit D 11 on the part of the defendant.

(*Pro ut* the same.)

By agreement of counsel on both sides the deeds that have been offered in evidence are not marked as exhibits.

Q. Have you in your possession the agreement between the Central R. R. Co. of N. J., of the first part, and the Morris Canal and Banking Company of the second part, and Francis O. Matthiessen of the third part, dated November 19, 1863.

A. I have that agreement before me.

Defendant offers it in evidence, and it is marked Exhibit 12, on the part of the defendant.

(*Pro ut* the same.)

63 Deed by James Hoey and wife to the American Dock and Improvement Company, dated May 23, 1864. Point that out to the judge.

WITNESS: This conveys to the American Dock and Improvement Company, among other things, the plot marked on this map by red color "formerly of John S. Gilbert."

A deed by John M. Cornelison and wife to the American Dock and Improvement Company dated April 15, 1865.

WITNESS: This Cornelison deed conveys a plot of land under water marked on this map by dotted red lines near an object marked in letters "Black Tom" and written inside with red ink "formerly John M. Cornelison."

A deed by Andrew Clerk and wife to the American Dock and Improvement Company, dated April 15, 1865.

WITNESS: This deed conveys a strip of land along the shore above high-water mark five feet wide for a short distance, and also a plot of fast land known as Kavan point from the south line of the Gilbert property southward to the southerly line of Kavan point, and also the riparian rights of the owner incident thereto.

Q. Have you before you a paper made by Isaac B. Culver and Francis Corlies and Isaac S. Buckalew and the American Dock and Improvement Company, and if so, please produce it: "To the Honorable Joel Parker, governor of the State of New Jersey"?

A. I have, and I produce it.

Q. That is not the original which you have before you, but a certified copy?

A. It purports to be a certified copy, the certificate signed by Henry C. Kelsey, secretary of state.

Q. There is a map attached to it, is there not?

A. There is a map attached to it.

(*Pro ut* the certified copy and map.)

64 A deed by Effie Thomas to the American Dock and Improvement Company, dated December 1, 1871.

—. Point that out to the judge.

WITNESS: This conveyance relates to the same piece of land under water known as the "Ogden right," which was conveyed by Cornelison to the company.

Q. You are familiar with the premises, the ripa from Kavan point around Communipaw cove to the sugar-house in Jersey City, are you?

A. I am.

Q. Did you draw these deeds that have been offered in evidence?

A. No, I did not. I drew the descriptions in some of the later

deeds, but the old deeds conveying the title I did not. The older deeds were drawn by some one else; that is, the deeds conveying the ripa originally.

Q. Can you tell whether those deeds embrace a continued ripa from Kavan point round to the sugar-house?

A. They do.

Q. You have been using a map in pointing out the premises conveyed by the deed which is marked Exhibit D 10. Who made that map?

A. I made it, myself, with my assistants in my office.

Q. There are memoranda upon that map showing for what purpose the coloring was made and what the different colorings designate?

A. There are.

Q. They were put there by you and under your direction?

A. Yes, sir.

Q. And all the writing upon that map was put there by you and by your directions?

A. Yes, sir.

Q. Is that correct—everything that appears on the face of it?

A. It is correct for the purposes indicated by it.

Q. Do any of these maps that you have produced here show what was known as the Morris canal grant from the State of New Jersey?

65 A. The map that we have been using, marked Exhibit D 10, shows by yellow color where that Morris Canal grant is.

The defendant proved and offered in evidence that Morris Canal grant in the laws of 1867, page 251, and the plaintiff proved and offered a certified copy of the acceptance of the grant by the company, dated June 10, A. D. 1867, filed and recorded in the secretary of state's office, June 11, A. D. 1867.

Cross-examination of JACOB CLARK by Mr. COLLINS:

Q. I show you Exhibit D 3 and ask you whence did you procure the date March 10, 1872?

A. From an old map made by myself originally at that time with that date upon it, which contained the surveys, among other things, put on subsequently, which is here shown.

Q. When was that broken bulkhead that runs from the extension of Jersey avenue to the Morris Canal grant put there?

A. It was placed there between the fall of 1886 and the time referred to, March 10, 1872. It was in the fall of 1866 that the first piece was put down.

Q. Which first piece was put down; which was the first piece put down?

A. It is my belief at present that it was the piece at the easterly end next to the sugar-house property.

Q. When was the rest of the bulkhead put there?

A. From time to time between the fall of 1888 and March, 1872.

Q. When was the other portion constructed?

A. The large portion was constructed between those dates, but I can't recall the details.

Q. Wasn't the principal part of that bulkhead put there in the spring of 1872?

A. Oh, no; I am pretty sure that that was not the case.

Q. Was it all there in March, 1872, that is shown on this map?

A. Oh, yes.

(Mr. BEDLE:)

66 Q. The bulkhead was all there in March, 1872?

A. All that is shown on this map.

Q. You stated a certain sum which you estimated to be the cost of the reclamation of the *locus in quo* "and in reference thereto." Indicate what you meant by the last part of your statement "in reference thereto." You afterwards explained, in answer to the judge, how much of expense was directly on the *locus in quo*. I want to know what made up the residue of the sum you first named?

—. It embraced all the reclamations, as I understood it, from the north side of the tide-water basin and whatever was outside of the boundary of the west-line grant. From the north side of the tide-water basin northerly.

Q. Indicate it on the map, Exhibit D 8?

A. (Indicating.) All to the northward of the tide-water basin marked in the light-brown color represents earth-filling, and the narrow strips along the north side of the tide-water basin colored Indian red represent bulkheads filled with stones, and the yellow coloring across the representation of Morris Canal and Henderson street and Jersey avenue represent bridges.

Q. And all of that you mentioned except the bulkhead you include in the figure named?

A. The bulkhead is included in that figure.

Q. Then the sum of $35,000 includes only the brown color inside the *locus in quo?*

A. Whatever I mentioned there as included in the *locus in quo* refers to that brown color.

Q. Then do you mean that what is shown inside the little square of dotted lines which is colored brown cost $35,000?

A. I think it did.

Q. How do you arrive at your figures; by estimate?

A. Yes.

Q. What were your demensions?

A. At the high-water mark, as near as I can make it as shown by the margin of this brown-tinted part, the depth, in order to bring it so it would remain about high-water mark perma-
67 nently, must be in the neighborhood of fifteen feet, that fifteen feet would be perhaps a low estimate, and the breadth of the mass that would be necessary to build that so that it would stay in that position would necessarily be broader than the limits of the

plot shown on account of the spreading out and the displacement of material. The bottom is very soft there.

Q. You have said Exhibit D 8 would show all done between the date of Exhibit D 3 and its own date. Can you tell when the reclamation ceased prior to 1886?

A. I think I did not state that this map showed what was done between 1872 and 1886; it showed the total done up to the date of the map.

Q. I meant, of course, in connection with the other map. You said nothing was done for some little time before 1886. I want to know when the reclamation ceased?

A. I don't know of anything being done to amount to anything so that I could take cognizance of it from for eight or nine years before 1886. If there was anything done it was outside of my notice.

Q. A map was offered in some other litigation in which the Central Railroad Company was brought in in which the date was fixed at 1879. Is that your judgment?

A. There might have been some fragments done in the early part of Judge Lathrop's administration.

A. We can take 1879 with safety, then?

A. I should think so.

Q. Did your company or some one in their interest build the bridge over the Morris canal?

A. That was built by the American Dock and Improvement Company.

Q. Was the purpose of this reclamation that crosses the *locus in quo* to afford a means of reaching the tide-water basin?

A. That was one purpose.

Q. Wasn't that the main purpose?

68 A. The main purpose was not confined to any one particular object.

Q. The main purpose embraced the whole development of the tract for all the purposes of the company?

A. I notice on this map Exhibit D 10, there is a tract colored in red, bordered in red, bounded by Grove street, Jenkins and Bergen avenues, and the old shore line; it is marked in four parcels with the names of individuals.

Q. What is intended by that?

A. That lot represents all the conveyances of the then riparian owners to Kingsland and Smith, trustees, and this red-bordered boundary represents the lines by which the trustees were ultimately to divide the lands then under water between the grantors and the Central Railroad Company of New Jersey.

Q. Then the grantors were to get the pieces marked with their names, and the Central Railroad Company the property to the south?

A. The Central Railroad Company the property to the south, and the grantors were to have the property to the north whenever the terms of the trusts were complied with. That is the way I understood it.

Q. And deeds have been given accordingly?

A. As to the plot marked on this map with the name of George W. Edge, and the plot marked with the name of Delos E. Culver, and the other one marked Benjamin Edge, the deeds have been passed in accordance with the trust. The plot marked riparian, figure 8, the last I know about it the title remained still in the name of Kingsland and Smith, trustees.

Q. After the Central Railroad Company got this riparian grant of 1874, it made deeds to these individuals: Edge and Culver, and Edge of the parcels shown in there?

A. I understood they did. Whether it was before or after
69 the grant, it was whenever they were authorized to do it by the terms of the trust.

Q. I called for a paper yesterday, referred to as Exhibit O in the terminal case. Do you produce it?

A. I do.

Q. This being produced on notice, I ask you is that manuscript in your writing?

A. It is, mainly.

Q. Is that the first draft of the changes made by the riparian commission, the attempted changes made by the riparian commission, in the tide-water basin and the attempted vacation of the Jersey City grant?

A. That is the draft as originally drawn up by me. I think I left it with Mr. Frelinghuysen, the counsel of the company.

Q. In the Terminal case, as we call it, you testified: "It was presented at a conference with Mr. Frelinghuysen and the riparian commissioners, or a part of them, in this form, which is the original draft in my handwriting, and remained with them and with the company until it was returned to me." Did you so testify?

A. That is what I understood to be the case.

Q. Then that is correct as I have read it to you?

A. Yes.

Q. Did you also testify when shown this paper and asked: "Q. For what purpose and at whose request did you draft that paper?" And did you answer, "For the purpose of effecting such alteration or modification in the tide-water basin as had been formerly laid out, either by the act of the legislature or by commissioners. I don't remember which, in connection with the expenditures and works of the American Dock Company as would facilitate an adjustment between the railroad and dock company and the State; it
was done at the request of John Taylor Johnston, president
70 of the two companies, and Senator Frelinghuysen, Chancellor Williamson, the late William E. Dodge and the late Adam Narry being present at the conference, and perhaps one or two other directors." Did you so testify?

A. I think that is correct.

Q. And is that true that I have read to you?

A. It is so; that is the way I understood it.

Q. Then this change, as you understood it, which the commissioners made, was suggested by the Central Railroad Company?

plot shown on account of the spreading out and the displacement of material. The bottom is very soft there.

Q. You have said Exhibit D 8 would show all done between the date of Exhibit D 3 and its own date. Can you tell when the reclamation ceased prior to 1886?

A. I think I did not state that this map showed what was done between 1872 and 1886; it showed the total done up to the date of the map.

Q. I meant, of course, in connection with the other map. You said nothing was done for some little time before 1886. I want to know when the reclamation ceased?

A. I don't know of anything being done to amount to anything so that I could take cognizance of it from for eight or nine years before 1886. If there was anything done it was outside of my notice.

Q. A map was offered in some other litigation in which the Central Railroad Company was brought in in which the date was fixed at 1879. Is that your judgment?

A. There might have been some fragments done in the early part of Judge Lathrop's administration.

A. We can take 1879 with safety, then?

A. I should think so.

Q. Did your company or some one in their interest build the bridge over the Morris canal?

A. That was built by the American Dock and Improvement Company.

Q. Was the purpose of this reclamation that crosses the *locus in quo* to afford a means of reaching the tide-water basin?

A. That was one purpose.

Q. Wasn't that the main purpose?

68 A. The main purpose was not confined to any one particular object.

Q. The main purpose embraced the whole development of the tract for all the purposes of the company?

A. I notice on this map Exhibit D 10, there is a tract colored in red, bordered in red, bounded by Grove street, Jenkins and Bergen avenues, and the old shore line; it is marked in four parcels with the names of individuals.

Q. What is intended by that?

A. That lot represents all the conveyances of the then riparian owners to Kingsland and Smith, trustees, and this red-bordered boundary represents the lines by which the trustees were ultimately to divide the lands then under water between the grantors and the Central Railroad Company of New Jersey.

Q. Then the grantors were to get the pieces marked with their names, and the Central Railroad Company the property to the south?

A. The Central Railroad Company the property to the south, and the grantors were to have the property to the north whenever the terms of the trusts were complied with. That is the way I understood it.

Q. And deeds have been given accordingly?

A. As to the plot marked on this map with the name of George W. Edge, and the plot marked with the name of Delos E. Culver, and the other one marked Benjamin Edge, the deeds have been passed in accordance with the trust. The plot marked riparian, figure 8, the last I know about it the title remained still in the name of Kingsland and Smith, trustees.

Q. After the Central Railroad Company got this riparian grant of 1874, it made deeds to these individuals: Edge and Culver, and Edge of the parcels shown in there?

A. I understood they did. Whether it was before or after
69 the grant, it was whenever they were authorized to do it by the terms of the trust.

Q. I called for a paper yesterday, referred to as Exhibit O in the terminal case. Do you produce it?

A. I do.

Q. This being produced on notice, I ask you is that manuscript in your writing?

A. It is, mainly.

Q. Is that the first draft of the changes made by the riparian commission, the attempted changes made by the riparian commission, in the tide-water basin and the attempted vacation of the Jersey City grant?

A. That is the draft as originally drawn up by me. I think I left it with Mr. Frelinghuysen, the counsel of the company.

Q. In the Terminal case, as we call it, you testified: "It was presented at a conference with Mr. Frelinghuysen and the riparian commissioners, or a part of them, in this form, which is the original draft in my handwriting, and remained with them and with the company until it was returned to me." Did you so testify?

A. That is what I understood to be the case.

Q. Then that is correct as I have read it to you?

A. Yes.

Q. Did you also testify when shown this paper and asked: "Q. For what purpose and at whose request did you draft that paper?" And did you answer, "For the purpose of effecting such alteration or modification in the tide-water basin as had been formerly laid out, either by the act of the legislature or by commissioners. I don't remember which, in connection with the expenditures and works of the American Dock Company as would facilitate an adjustment between the railroad and dock company and the State; it
was done at the request of John Taylor Johnston, president
70 of the two companies, and Senator Frelinghuysen, Chancellor Williamson, the late William E. Dodge and the late Adam Narry being present at the conference, and perhaps one or two other directors." Did you so testify?

A. I think that is correct.

Q. And is that true that I have read to you?

A. It is so; that is the way I understood it.

Q. Then this change, as you understood it, which the commissioners made, was suggested by the Central Railroad Company?

A. I can't tell who suggested it first. My first connection with the matter was that invitation to draw up that paper. I was requested to undertake to do it.

Q. It has endorsed on it in pencil the words, "Change ought to be made before the deed is given to us." Whose writing is that?

A. That writing was not upon the paper when it first went out of my hands, and it was on it when it came back, and I think that writing is Mr. Frelinghuysen's.

Mr. COLLINS: We offer that document in evidence. It is Exhibit O in the terminal case, and can be referred to there. (*Pro ut* the same.)

Q. And that paper was prepared and presented as stated before the changes were made by the riparian commissioners?

A. I think I took that paper to a conference, by appointment, between Mr. Frelinghuysen and those who were the riparian commissioners some six months before the filing of the process changing the basin, September, 1874.

Redirect examination by Mr. WILLIAMSON:

Q. In your cross-examination counsel asked you where you got the date of March 10, 1872, and you told him that you got it from a former map made by you. Now, I show you a map. Is
71 this the one, is this the map to which you referred?

A. That is the map to which I referred.

Q. Does this map show the bulkhead to which your attention was called on cross-examination?

A. It does. It is marked on this map, the long parallelogram colored in faint pink.

Q. Was this map made by you?

A. This map was made by myself.

Q. Dated when?

A. March 10, 1872. The original map is dated March 10, 1872.

Q. What do you mean by the original map?

A. The map as originally made showing the state of things at that date, March 10, 1872. It shows that for one thing.

Q. What else does it show?

A. It shows also the delineations subsequently made and put upon this map, showing the progress of the reclamation at certain dates.

Q. I see that map is colored differently in different portions of it?

A. Yes.

Q. Is there any memorandum upon that map showing what those colors designate?

A. There is a memorandum.

Q. Is that memorandum correct?

A. It is.

Defendant offers the map in evidence and it is marked D 13 on the part of the defendant.

Q. I show you another map; by whom was this made?

A. Made by me at the request of Judge Depue; I made it at his request. That has also got writings on it designating what the colors refer to, and that is correct; and those colors designate what is indicated by the writing opposite them.

Q. Is that bulkhead upon the map which was referred to, to which your attention was called in cross-examination?

A. It is.

Q. When was that bulkhead made?

A. That bulkhead was made within the period designated on this map, also between the fall of 1866 and the latest date shown on this map—January, 1870.

72 This map is offered in evidence, and is marked Exhibit D 14 on the part of the defense.

Q. Your attention has been called, on cross-examination, to a bridge which was over the Morris canal. What was the cost of that bridge?

A. A little over $2,500.

Q. For what purpose was that bridge erected?

A. It was made to get means of access and connection between the *locus in quo* and the surrounding property on the one hand and Jersey City on the other, by way of Henderson street.

Q. Does it connect with any other property except the premises in question? Is it used for any other purposes than connection with the premises in question?

A. Not that I am aware of. It is left open so that everybody can drive over it.

(Mr. COLLINS:)

Q. Did not this continuation across the *locus in quo* run all the way down to the Central Railroad Company's tide-water basin?

A. Yes; the filled land connected with this bridge.

The defendant proved that taxes had been assessed by Jersey City against the lands in question according to the following schedule:

The taxes so assessed for the year 1874 were paid in December, 1874; for 1875, in December, 1875; for 1876, in January, 1878; for 1877, in January, 1878; and for 1878 to 1883, inclusive, were paid February 2, 1884.

73 *Statement of Taxes Paid the City of Jersey City, N. J., by the American Dock and Improvement Company upon that Portion of Their Property Embraced in the Grant to the City of Jersey City, New Jersey.*

		Original valuation.	Adjusted valuation on appeal.	Amount of tax paid.
	Year 1874.			
	Rate, $30.00 per $1,000.00.			
Block 162..	Lots 63 to 78 in South street	$3,200	No change	$96 00
" " ..	" 108 " 138 " Bergen street	3,200	" "	96 00
" 163..	" 107 " 133 " " "	2,800	" "	84 00
" " ..	" 109 " 135 " Essex street	2,800	" "	84 00
" 164..	" 114 " 136 " " "	2,400	" "	72 00
" " ..	" 117 " 137 " Morris street	2,200	" "	66 00
" 194..	" 79 " 94 " South street	3,200	" "	96 00
" " ..	" 140 " 172 " Bergen street	3,400	" "	102 00
" 195..	" 139 " 173 " " "	3,600	" "	108 00
" " ..	" 137 " 171 " Essex street	3,600	" "	108 00
" 196..	" 138 " 174 " " "	3,800	" "	114 00
" " ..	" 137 " 175 " Morris street	3,800	" "	114 00
" 229..	" 25 " 48 " South street	4,800	" "	144 00
" " ..	" 1 " 24 " Bergen street	4,800	" "	144 00
74	Year 1875.			
	Rate, $26.80 per $1,000.00.			
Block 162..	Lots 63 to 78 in South street	$3,200	No change	$85 76
" " ..	" 108 " 138 " Bergen street	3,200	" "	85 76
" 163..	" 107 " 133 " " "	2,800	" "	75 04
" " ..	" 109 " 135 " Essex street	2,800	" "	75 04
" 164..	" 114 " 136 " " "	2,400	" "	64 32
" " ..	" 117 " 137 " Morris street	2,200	" "	58 96

" 194..	" 79 " 94 " South street	3,200	" "	85 76
" " ..	" 140 " 172 " Bergen street	3,400	" "	91 12
" 195..	" 139 " 173 " " "	3,600	" "	96 48
" " ..	" 137 " 171 " Essex street	3,600	" "	96 48
" 196..	" 138 " 174 " " "	3,800	" "	101 84
" " ..	" 137 " 175 " Morris street	3,800	" "	101 84
" 229..	" 25 " 48 " South street	4,800	" "	128 64
" " ..	" 1 " 24 " Bergen street	4,800	" "	128 64

Year 1876.

Rate, $25.80 per $1,000.00.

Block 162..	Lots 63 to 78 in South street	$3,200	No change	$82 56
" " ..	" 108 " 138 " Bergen street	3,200	" "	82 65
" 163..	" 107 " 133 " " "	2,800	" "	72 24
" " ..	" 109 " 135 " Essex street	2,800	" "	72 24
" 164..	" 114 " 136 " " "	2,400	" "	61 92
" " ..	" 117 " 137 " Morris street	2,200	" "	56 75
" 194..	" 79 " 94 " South street	3,200	" "	82 56
75				
" " ..	" 140 " 172 " Bergen street	3,400	" "	87 72
" 195..	" 139 " 173 " " "	3,600	" "	92 88
" " ..	" 137 " 171 " Essex street	3,600	" "	92 88
" 196..	" 138 " 174 " " "	3,800	" "	97 84
" " ..	" 137 " 175 " Morris street	3,800	" "	97 84
" 229..	" 25 " 48 " South street	4,800	" "	124 64
" " ..	" 1 " 24 " Bergen street	4,800	" "	123 64

Year 1877.

Rate, $25.40 per $1,000.00.

Block 162..	Lots 63 to 78 in South street	$3,200	No change	$81 28
" " ..	" 108 " 138 " Bergen street	3,200	" "	81 28
" 163..	" 107 " 133 " " "	2,800	" "	71 12
" " ..	" 109 " 135 " Essex street	2,800	" "	71 12
" 164.	" 114 " 136 " " "	2,400	" "	60 96

Statement of Taxes Paid the City of Jersey City, N. J., &c.— Continued.

		Original valuation.	Adjusted valuation on appeal.	Amount of tax paid.
Block 164..	Lots 117 to 137 in Morris street	$2,200	No change	$55 88
" 194..	" 79 " 94 " South street	3,200	" "	81 28
" " ..	" 140 " 172 " Bergen street	3,400	" "	86 36
" 195..	" 139 " 173 " " "	3,600	" "	91 44
" " ..	" 137 " 171 " Essex street	3,600	" "	91 44
" 196..	" 138 " 174 " " "	3,800	" "	96 52
" " ..	" 137 " 175 " Morris street	3,800	" "	96 52
" 229..	" 25 " 48 " South street	4,800	" "	121 92
" " ..	" 1 " 24 " Bergen street	4,800	" "	112 92
76	Year 1878.			
	Rate, $23.60 per $1,000.00.			
Block 162..	Lots 63 to 78 in South street	$3,200	No change	$75 52
" " ..	" 108 " 138 " Bergen street	3,200	" "	75 52
" 163..	" 107 " 133 " " "	2,800	" "	66 08
" " ..	" 109 " 135 " Essex street	2,800	" "	66 08
" 164..	" 114 " 136 " " "	2,400	" "	56 64
" " ..	" 117 " 137 " Morris street	2,200	" "	53 92
" 194..	" 79 " 94 " South street	3,200	" "	75 52
" " ..	" 140 " 172 " Bergen street	3,400	" "	80 24
" 195..	" 139 " 173 " " "	3,600	" "	84 96
" " ..	" 137 " 171 " Essex street	3,600	" "	84 96
" 196..	" 138 " 174 " " "	3,800	" "	89 68
" " ..	" 137 " 175 " Morris street	3,800	" "	89 68
" 229..	" 25 " 48 " South street	4,800	" "	113 28
" " ..	" 1 " 24 " Bergen street	4,800	" "	113 28

Year 1879.

Rate, $28.00 per $1,000.00.

7	Block	162	Lots	63 to	78	in South street	$3,200	No change	$89 60
	"	"	"	108 "	138	" Bergen street	3,200	" "	89 60
	"	163	"	107 "	133	" " "	2,800	" "	78 40
	"	"	"	109 "	135	" Essex street	2,800	" "	78 40
	"	164	"	114 "	136	" " "	2,400	" "	67 20
	"	"	"	117 "	137	" Morris street	2,200	" "	61 60
	"	194	"	79 "	94	" South street	3,200	" "	89 60
77									
	"	"	"	140 "	172	" Bergen street	3,400	" "	95 20
	"	195	"	139 "	173	" " "	3,600	" "	100 80
	"	"	"	137 "	171	" Essex street	3,600	" "	100 80
	"	196	"	138 "	174	" " "	3,800	" "	106 40
	"	"	"	137 "	175	" Morris street	3,800	" "	106 40
	"	229	"	25 "	48	" South street	4,800	" "	134 40
	"	"	"	1 "	24	" Bergen street	4,800	" "	134 40

Year 1880.

Rate, $29.80 per $1,000.00.

	Block	162	Lots	63 to	78	in South street	$3,200	No change	$95 36
	"	"	"	108 "	138	" Bergen street	3,200	" "	95 36
	"	163	"	107 "	133	" " "	2,800	" "	83 44
	"	"	"	109 "	135	" Essex street	2,800	" "	83 44
	"	164	"	114 "	136	" " "	2,400	" "	71 52
	"	"	"	117 "	137	" Morris street	2,200	" "	65 56
	"	194	"	79 "	94	" South street	3,200	" "	95 36
	"	"	"	140 "	172	" Bergen street	3,400	" "	101 32
	"	195	"	139 "	173	" " "	3,600	" "	107 28
	"	"	"	137 "	171	" Essex street	3,600	" "	107 28
	"	196	"	138 "	174	" " "	3,800	" "	113 24
	"	"	"	137 "	175	" Morris street	3,800	" "	113 24
	"	229	"	25 "	48	" South street	4,800	" "	143 04
	"	"	"	1 "	24	" Bergen street	4,800	" "	143 04

Statement of Taxes Paid the City of Jersey City, N. J., &c.—Continued.

		Original valuation.	Adjusted valuation on appeal.	Amount of tax paid.
78	Year 1881.			
	Rate, $29.00 per $1,000.00.			
Block 162..	Lots 63 to 78 in South street	$3,200	No change	$92 80
" " ..	" 108 " 138 " Bergen street	3,200	" "	92 80
" 163..	" 107 " 133 " " "	2,800	" "	81 20
" " ..	" 109 " 135 " Essex street	2,800	" "	81 20
" 164..	" 114 " 136 " " "	2,400	" "	69 60
" " ..	" 117 " 137 " Morris street	3,200	" "	83 80
" 194..	" 79 " 94 " South street	3,300	" "	92 80
" " ..	" 140 " 172 " Bergen street	3,400	" "	98 60
" 195..	" 139 " 173 " " "	3,600	" "	104 40
" " ..	" 137 " 171 " Essex street	3,600	" "	104 40
" 196..	" 138 " 174 " " "	3,800	" "	110 20
" " ..	" 137 " 175 " Morris street	3,800	" "	110 20
" 229..	" 25 " 48 " South street	4,800	" "	139 20
" " ..	" 1 " 24 " Bergen street	4,800	" "	139 20
	Year 1882.			
	Rate, $29.40 per $1,000.00.			
Block 162.	Lots 63 to 78 in South street	$3,200	No change	$94 08
" " ..	" 108 " 138 " Bergen street	3,200	" "	94 08
" 163..	" 107 " 133 " " "	2,800	" "	82 32
" " ..	" 109 " 135 " Essex street	2,800	" "	82 32
" 164..	" 114 " 136 " " "	2,400	" "	70 56
" " ..	" 117 " 137 " Morris street	2,200	" "	64 68
" 194..	" 79 " 94 " South street	3,200	" "	94 08

79											
"	"	..	"	140	" 172	"	Bergen street	3,400	"	"	99 96
"	195	..	"	139	" 173	"	" "	3,600	"	"	105 84
"	"	..	"	137	" 171	"	Essex street	3,600	"	"	105 84
"	196	..	"	138	" 174	"	" "	3,800	"	"	111 72
"	"	..	"	137	" 175	"	Morris street	3,800	"	"	111 72
"	229	..	"	25	" 48	"	South street	4,800	"	"	114 12
"	"	..	"	1	" 24	"	Bergen street	4,800	"	"	114 12
							Year 1883.				
							Rate, $32.80 per $1,000.00.				
Block	162	..	Lots	63	to 78	in	South street	$3,200	No change		$104 96
"	"	..	"	108	" 138	"	Bergen street	3,200	"	"	104 96
"	163	..	"	107	" 113	"	" "	2,800	"	"	91 84
"	"	..	"	109	" 135	"	Essex street	2,800	"	"	91 84
"	164	..	"	114	" 136	"	" "	2,400	"	"	78 72
"	"	..	"	117	" 137	"	Morris street	2,200	"	"	72 16
"	194	..	"	79	" 94	"	South street	3,200	"	"	104 96
"	"	..	"	140	" 174	"	Bergen street	3,400	"	"	111 52
"	195	..	"	139	" 173	"	" "	3,600	"	"	118 08
"	"	..	"	137	" 171	"	Essex street	3,600	"	"	118 08
"	196	..	"	138	" 174	"	" "	3,800	"	"	124 64
"	"	..	"	137	" 175	"	Morris street	3,800	"	"	124 64
"	229	..	"	25	" 48	"	South street	4,800	"	"	157 44
"	"	..	"	1	" 24	"	Bergen street	4,800	"	"	157 44

Statement of Taxes Paid the City of Jersey City, N. J., &c.—Continued.

		Original valuation.	Adjusted valuation on appeal.	Amount of tax paid.
80	Year 1884.			
	Rate, —.			
Block 162..	Lots 63 to 78 in South street	$12,800	No change	Taxes of 1884 and 1885 certiorarried.
" " ..	" 108 " 138 " Bergen street	12,800	" "	
" 163..	" 107 " 133 " " "	12,800	" "	
" " ..	" 109 " 135 " Essex street	11,200	" "	
" 164..	" 114 " 136 " " "	9,600	" "	
" " ..	" 117 " 137 " Morris street	8,800	" "	
" 194..	" 79 " 94 " South street	12,800	" "	
" " ..	" 140 " 172 " Bergen street	13,600	" "	
" 195..	" 139 " 173 " " "	14,400	" "	
" " ..	" 137 " 171 " Essex street	14,400	" "	
" 196..	" 138 " 174 " " "	15,200	" "	
" " ..	" 137 " 175 " Morris street	16,000	" "	
" 229..	" 25 " 48 " South street	18,000	" "	
" " ..	" 1 " 24 " Bergen street	18,000	" "	
Assessments and valuations for years 1885 to 1889, inclusive, as follows: "Tract of land as known conditional grant to the mayor and aldermen of Jersey City, by act of legislature approved April 4, 1872, bounded as follows: North by the centre line of Morris street produced, east by the Morris canal and centre line of Van Vorst street, south by north line of the tide-water basin, as established by an act of legislature approved April 4th, 1872, and west by a line running parallel with the centre line of Van Vorst street, distant 1,090 feet westerly therefrom, comprising the following blocks and parts of blocks: 162, 194, 195, 196; parts 163, 164, 229, 230, 231. Total area, 807,970 sq. feet."		$500,000	No change	Taxes of 1884 to 1889, inclusive, unpaid.
(NOTE.)—The corporation of Jersey City claims to own the above tract of land, though title to the same is somewhat involved. It is the intention of Jersey City not to waive any rights she may have in the same nor the rights of the city to be in any way affected in said property by putting the same in tax levy.		The $500,000 named being the taxable valuation placed upon this property by the city of Jersey City for each year of the years 1885, 1886, 1887, 1888, and 1889.		

81 *Recapitulation.*

Taxes	1874,	paid	$1,518 00	
"	1875,	"	1,275 68	
"	1876,	"	1,227 28	
"	1877,	"	1,199 04	
"	1878,	"	1,125 36	
"	1879,	"	1,332 80	
"	1880,	"	1,418 48	
"	1881,	"	1,400 40	
"	1882,	"	1,399 44	
1	1883,	"	1,561 28	
				$13,457 76

82 The defendant also proved from the minutes of the board of riparian commissioners, that on November 24, 1874, the chairman of the board reported that he had closed the delivery of the deed or grant to the Central Railroad Company of New Jersey, delivering the same to John Taylor Johnston, Esquire, president of the company; which action of the chairman was then approved by the board.

The defendant also proved by William H. Peddle, as follows (his testimony is also for perfect accuracy given by question and answer):

Direct examination by Mr. WILLIAMSON:

Q. Are you an officer in the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. What position do you hold?

A. Superintendent of the Central division.

Q. Are you familiar with the premises in dispute?

A. Yes, sir.

Q. Familiar with the location of the bridge over the Morris canal?

A. Yes, sir.

Q. And of the reclamation on the south side of the canal?

A. Yes, sir.

Q. What is that bridge used for? What has it been used for heretofore; not what it is used for now, but what has been the use of that bridge heretofore?

A. The use of the bridge has been to allow communication between the city of Jersey City and the property of the New Jersey Central Railroad Company.

Q. And does that include other property beside the property in dispute?

A. Yes.

The defendant then rested.

The following is a copy of the draft in the handwriting of Jacob M. Clark, referred to in his testimony offered in evidence by the plaintiff and proved:

Draft in Handwriting of Jacob M. Clark.

83 Whereas, in conformity with an act entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the waters of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, the board of riparian commissioners did reduce to writing a description of so much and such parts of said lands as were designated in said act for the purposes therein mentioned, and file a map and description thereof in the office of the secretary of state, and duplicates of said map and description in the office of the clerk of the county of Hudson, and did fix and determine a certain sum of money and terms of payment, as a proper, equitable compensation to be paid by said city to the State for said cession; and

Whereas, the said city, its mayor and aldermen, have, on their part, failed *and refused* to comply in the terms and conditions so fixed and determined, and with the requirements of said act; and

Whereas, the interests and convenience of the State and the riparian owners render a change in such tide-water basin desirable *and necessary*, therefore we, the said commissioners, appointed under the act approved March 31, 1869, entitled "Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands under the waters of the bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," do hereby, in conformity with a further supplement to said act, approved April 4, 1872, make the following changes in the *Jersey City* Jersey City tide-water basin, as heretofore fixed and established and filed in the clerk's office of the county of Hudson, on the 12th day of December, 1872, to wit:

84 We do fix and establish the line of solid filling for the northerly boundary of said tide-water basin, to be a line beginning at a point in the southerly prolongation of the easterly line of Warren street, sixteen hundred feet southerly from the southerly side of Grand street, and running thence westerly along *the southerly face of* a bulkhead parallel with Grand street *or nearly so*, twenty-eight hundred (2,800) feet to the westerly boundary line of said tide-water basin, as filed in the office of the secretary of state; and

We do vacate all such parts of the tide-water basin as lie northerly of the northerly boundary line as hereinbefore laid out, fixed and established; and

We do vacate all that PART OF THE tract of land under water ceeded FOR THE PURPOSES OF A BASIN to the mayor and common council of Jersey City by the said act first above cited; commencing at a point in the centre of Van Vorst street, if extended southerly, and distant thirteen hundred feet southerly from the southerly side of Grand street, Jersey City, and from thence running westerly AND parallel with Grand street, ONE THOUSAND AND NINETY FEET; THENCE NORTHERLY AT RIGHT ANGLES WITH GRAND STREET, eight hundred and ten

feet to the centre of Morris street, if extended westerly; thence easterly and parallel with Grand street, to the present high-water mark on the southwesterly side of the Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street; thence southerly through the centre of Van Vorst street, if extended southerly, to the place of beginning.

NOTE.—The words in italics in the original of above draft have a line drawn through them, and the words in small caps are interlined therein.

85 And the plaintiff proved, by Robert C. Bacot on cross-examination, that in the year 1837 the property bordering on Communipaw cove from the boundary ditch of the associates near Van Vorst street until you get westward, say to Jersey avenue, was a part of the old Van Vorst farm, and that at that date Cornelius Van Vorst was in possession of that property claiming to own the same.

And the plaintiff produced JOHN C. PAYNE, a witness, who swore as follows: (This testimony, for greater accuracy, is also inserted with question and answer.)

Direct examination by Mr. COLLINS:

Q. Are you a civil engineer and a surveyor?
A. I am.
Q. And have been in practice how long?
A. Fifteen years.
Q. You are familiar with the reclamations south of Jersey City made by the Central Railroad Company?
A. I am up to the year 1879.
Q. You made a map, I think, that has been introduced in evidence by the Central Railroad Company, of these reclamations, in other suits?
A. I made a map which was introduced by the trustees of the public school fund.
Q. Mr. Clark testified that he estimated the value of the filling in of the *locus in quo* in this case at $35,000. Are you familiar with the *locus in quo?*
A. Yes, sir.
Q. And with the filling that was done—the cost of it before 1879?
A. Yes, sir.
Q. Are you accustomed to estimate on engineering matters of that kind?
A. Yes, sir.
Q. How much, in your judgment, was that filling worth?
A. I made a calculation while Mr. Clark was giving his testimony, and I should think twelve to fifteen thousand dollars would put that filling in there.

And the plaintiff also offered in evidence and proved Pamphlet

Laws of New Jersey for 1872, page 909, being the charter of
86 the Passaic Valley and Peapack Railroad Company, and showing the west-line grant. And also offered in evidence and proved the record of the west-line grant, which will be found, dated March 19, 1872, proved May 20, 1872, recorded May 27, 1872, in Liber 242, of Deeds for Hudson County on pages 211, &c.

The maps, deeds and instruments referred to and used in the case as hereinbefore mentioned are to be considered and taken as a part thereof and of this record.

But whether or not, upon the whole matter aforesaid by the said justice aforesaid, in manner aforesaid found, the said defendant—as to the part of the premises claimed by the said plaintiff in its said declaration, for which the said defendant defends, to wit, about nineteen and one-tenth acres thereof, situate and described as in the said plea of the said defendant is guilty of the trespass and ejectment whereof the said plaintiff has above thereof complained against it in its said declaration the said justice is altogether ignorant and thereupon prays advice of the said supreme court; and if, upon the whole matter aforesaid it shall seem to the said court that the said defendant is guilty in manner and form aforesaid, then the said justice says that the said defendant as to said part of the premises defended for is guilty in manner and form as the said plaintiff has above thereof complained against it; but if, on the whole matter aforesaid, it shall seem to the said court that the said defendant is not guilty as aforesaid, then the said justice says that the said defendant, as to the said part of the said premises defended for, is not guilty in manner and form as the said plaintiff has above thereof complained against it.

Therefore it is considered that the said plaintiff do recover against the said defendant the possession of all that parcel of land and premises, situate, lying and being in Jersey City, Hudson county,
New Jersey, commencing at a point in the centre of Van Vorst
87 street, if extended southerly, and distant thirteen hundred feet southerly from the southerly line of Grand street, Jersey City; and from thence running westerly and parallel with Grand street one thousand and ninety feet; thence northerly at right angles with Grand street two hundred and eighty-seven feet more or less to the middle line of a tract of land designated as Bergen street, as shown on a map of the farm of Cornelius Van Vorst, made for him by Joseph F. Bridges, surveyor, dated June, A. D. 1835, and filed in the office of the clerk of Hudson county April 24, A. D. 1847; thence easterly along the middle line of said tract so designated as Bergen street one hundred and sixteen feet more or less to the middle line of a tract designated on the above-mentioned map as Beach street (otherwise known as Grove street), thence northerly to the middle line of said tract so designated as Beach street (otherwise Grove), five hundred and twelve feet more or less to the centre line of Morris street, if extended westerly; thence easterly and parallel with Grand street to the present high-water mark on the southwesterly side of the Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street, thence south-

erly through the centre of Van Vorst street, if extended to the place of beginning, containing about nineteen and one-tenth acres, more or less, and also one hundred and eleven dollars and seventy-eight cents for their costs and charges by the said court now have adjudged to the said plaintiff and with their assent.

And hereupon the said plaintiff prays the writ of the State of New Jersey to be directed to the sheriff of the county of Hudson aforesaid to cause them to have possession of the premises aforesaid and it is granted to them returnable, etc.

Judgment signed this twelfth day of March, A. D. eighteen hundred and ninety-two.

M. BEASLEY, *C. J.*

I, Benjamin F. Lee, clerk of the supreme court of the State
88 of New Jersey, hereby certify, that the foregoing is a true copy of the judgment in above-stated cause as the same remains of record in my office.

In testimony whereof I have hereto set my hand and the seal of said court at Trenton this twenty-sixth day of April, A. D. eighteen hundred and ninety-two.

[Seal of Supreme Court.]

BENJ. F. LEE, *Clk.*

New Jersey Court of Errors and Appeals.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, Plaintiff in Error, *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendant in Error.	In Error to Supreme Court.

Assignment of Errors.

Afterwards, to wit, on the — day of May, 1892, in the court of errors and appeals in the last resort in all causes in the State of New Jersey, comes the said The American Dock and Improvement Company by its attorney, B. Williamson, and assigns the following causes of error:

First. Because the supreme court decided that the statute entitled "An act to cede to the mayor and common council of Jersey City certain lands of the State now and heretofore under the tide waters
89 of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, passes the title of the lands therein described *in presenti* to the city, without acceptance on the part of the city.

Second. Because the said court decided that the title to such granted lands being in the act devoted for the creation of public wharves, is indefeasible except by statute, and cannot be lost or impaired by the acts or neglects of the municipality.

Third. Because the said court decided that "the lands thus set apart are removed from the dominion of the riparian commis-

sioners" and that "a conveyance of them by such officials is a mere nullity."

Fourth. Because the said court decided that said statute under which the plaintiff claimed to recover was constitutional; the contrary thereof is averred by the defendant.

Fifth. Because the said court decided that the said plaintiff had complied with the condition of the act as to payment, the contrary whereof is averred by the defendant.

Sixth. Because the said plaintiff in ejectment had not complied with the statute under which title was claimed as to the terms under which they were entitled to the possession.

Seventh. Because the said plaintiff in ejectment had not complied with the terms fixed and determined by the board of riparian commissioners as required by the third section of the said act.

Eighth. Because there were no description and map filed in the office of the secretary of state, and duplicates filed in the office of the clerk of the county of Hudson, as provided in section six of the said act. There was no compliance with said section six.

90 Ninth. Because the terms fixed and determined by the board of riparian commissioners for the purpose of complying with section three of the said act were obsolete, inapplicable and void in the year 1885, when the city undertook to act upon the same and comply therewith, and such action on the part of the city gave the plaintiff in ejectment no right to the possession of the said lands.

Tenth. Because the plaintiff in ejectment shows no title by the special verdict or findings to the land in question, or any right to the possession thereof.

Eleventh. Because the said court had no jurisdiction over the subject-matter of this case.

Twelfth. Because the rights of the defendants as shore owners were not extinguished by the city.

Thirteenth. Because the said court decided that the plaintiff is entitled to recover, when the decision should have been in favor of the defendant.

Fourteenth. Because the said court ordered judgment in favor of the plaintiff in ejectment and against the defendant, when the judgment should have been in favor of the defendant and against the plaintiff.

B. WILLIAMSON,
Attorney for and of Counsel with Plaintiff in Error.

Then follows joinder in error 5.

91 This rule is returned by consent, as an outbranch of the record.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF JERSEY CITY *vs.* THE AMERICAN DOCK AND IMPROVEMENT COMPANY.	In Ejectment. Rule for Judgment.

The above-stated cause having been tried at the April term, 1890, of the Hudson circuit before Honorable Jonathan Dixon, associate justice of this court, by consent without a jury, and the said justice having found the issues in favor of the plaintiff subject to the opinion of the supreme court upon a special case with leave to either party, for the purpose of a writ of error to turn the same into a special verdict or finding; and the postea having been withheld until the argument of said special case and the supreme court having at the present term adjudged on such special case that the plaintiff is entitled to judgment for the part of the premises described in the declaration for which the defendant defended, and the defendant having elected to turn the special case into a special verdict or finding for the purpose of bringing a writ of error upon the judgment to be entered thereon and the said justice having signed postea accordingly:—

It is on due notice to the defendant's attorney, ordered that the said postea be filed and the judgment be entered thereon in favor of the plaintiff and against the defendant for the recovery of the possession of that part of the premises described in the plaintiff's declaration for which the defendant in its plea defended, to wit, all
92 that parcel of land and premises situate, lying and being in Jersey City, Hudson county, New Jersey, commencing at a point in the centre of Van Vorst street if extended southerly and distant thirteen hundred feet southerly from the southerly line of Grand street, Jersey City; and from thence running westerly and parallel with Grand street one thousand and ninety feet, thence northerly at right angles with Grand street two hundred and eighty-seven feet more or less to the middle line of a tract of land designated as Bergen street, as shown on a map of the farm of Cornelius Van Vorst, made for him by Joseph F. Bridges, surveyor, dated June, A. D. 1835, and filed in the office of the clerk of Hudson county April 24, A. D. 1847; thence easterly along the middle line of said tract so designated as Bergen street one hundred and sixteen feet more or less to the middle line of said tract so designated as Bergen street, one hundred and sixteen feet more or less to the middle line of a tract designated on the above-mentioned map as Beach street (otherwise known as Grove street); thence northerly in the middle line of said tract so designated as Beach street (otherwise Grove) five hundred and twelve feet more or less to the centre line of Morris street, if extended westerly; thence easterly and parallel with Grand street to the present high-water mark on the southwesterly side of the Morris canal; thence southeasterly along said high-water mark to the centre of Van Vorst street; thence

southerly through the centre of Van Vorst street if extended, to the place of beginning, containing about nineteen and one-tenth acres more or less.

Rule entered March, 1892, on motion of—

ROBERT S. HUDSPETH,
Att. of Plaintiff.

93 *Opinion of Supreme Court on Special Case.*

A statute declaring "That the State doth hereby grant to the mayor and aldermen of Jersey City, in fee-simple" a certain defined tract of land under tide water, passes the title *in presenti*, without acceptance on the part of the city.

The title to such granted lands being in the act devoted for the creation of public wharves, is in-feasible except by statute, and cannot be lost or impaired by the acts or neglects of the municipality.

The lands thus set apart are removed from the dominion of the riparian commissioners; a conveyance of them by such officials is a mere nullity.

Qu. Has a riparian owner any right in such lands?

THE MAYOR AND ALDERMEN OF JERSEY CITY
vs.
THE AMERICAN DOCK AND IMPROVEMENT CO. } In Ejectment.

Robert S. Hudspeth, att. of plaintiff.
William D. Edwards and Gilbert Collins, of counsel.
B. Williamson and Jos. D. Bedle, counsel for defendant.

The opinion of the court was delivered by BEASLEY, Ch. Jus.:

On the 4th of April, 1872, a statute was enacted whose title is in these words, viz: "An act to cede to the mayor and common council of Jersey City certain lands of the State now and hereto-
94 fore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto."

Then follows the preamble and first section which reads thus:

"Whereas, the riparian commissioners of the State of New Jersey in their reports for the years 1871 and 1872 have called the attention of the legislature to the fact that Jersey City is without public docks, and have recommended that a part of the large basin laid out by the commissioners in 1864, be conveyed to the mayor and aldermen of Jersey City for public uses: therefore—

1st. Be it enacted, &c. That the State doth hereby grant to the mayor and aldermen of Jersey City, in fee-simple, so much and such parts of the lands which are now under tide water, or were heretofore under tide water of said Communipaw bay commencing," &c.

In the second section it is provided "that the mayor and aldermen by their appropriate board, shall have full control and regulation of the basin and wharves and land conveyed to them;" and they shall be and are hereby required to improve the same with all convenient despatch in such manner that, at least, one-third of the

area of said lands shall be flowed by the tide water and made navigable for such vessels as the citizens or inhabitants of said city, or persons doing business therein, may, under the control and regulation of said board desire to use said basin.

Section 4th relates to the consideration of the grant and is expressed in the following terms: "That for the title hereby conveyed the city shall pay into the treasury of the State, or give to this State, a bond for such sum of money, and on such terms as to payment and interest as the board of riparian commissioners shall under all the circumstances of the case, and taking into consideration the public purposes to which said lands are to be applied, fix and determine as a proper and equitable compensation to the State
95 for such title, and until the giving of such bond, or the payment of such money, said city shall not enter on said lands," &c.

By the fifth section of this act it was further provided that there should be established adjacent to the submerged lands just mentioned a tide-water basin, a certain tract of land under water which is particularly described, and declaring that the above tide-water basin in this act described shall be and remain, and the same is hereby dedicated as and for a tide-water basin.

Before leaving this act and in this connection the first objection interposed in the cause by the defendant may here be commodiously disposed of. That objection was that — this statute makes provision for the creation of wharves and also of a basin, the act is in conflict with that provision of the constitution of the State which requires that "every law shall embrace but one object."

Upon this point it is enough to say that this subject was considered, in its relation to this same enactment, in the case of The Easton and Amboy R. Co. *v.* The Central R. Co., 23 Vroom, 271; and this court then concluded that the exception in question had no legal basis. We then thought, as we think now, that this act embraces but one purpose and one scheme, and that the erection of these wharves and this basin, is the appropriate effectuation of such purpose and scheme. For present purposes, therefore, this act will be deemed to have all the force of constitutional legislation.

Viewing it in this light it becomes of the first importance to ascertain its exact legal effect. That effect, as it seems to me, was plainly and incontestably this: it vested, at the instant that it became a law the title to the tract of submerged land now in controversy forever in the mayor and aldermen of Jersey City. That the statute has this immediate force is not questionable for the reason that its impression "that the said State doth hereby grant, &c., in fee-
96 simple" is susceptible of no other meaning. It was in this sense that these words were interpreted by this court in the case just cited.

And while it is thus clear that this was a legislative conveyance of an estate in fee *in presenti* it is equally clear that it had not the force of vesting in the city this tract as its private property. The municipality was made the recipient and custodian of it exclusively for public uses. This purpose is expressly declared in the preamble

above cited, and it is likewise expressed in all its regulations and provisions. The proposition is self-evident.

Being invested then with the fee, and holding the premises in trust for the public, the conclusion, so decisive of most of the issues in this case, necessarily results, that the municipality was and is devoid of all capacity to impair the interests thus committed to its keeping. The grant had been made to it without its assent; it was not necessary for it to accept it; it had not the competency to refuse to execute its duties with regard to it while the law-making power had seen fit, in the plenitude of its authority, to impose upon it. The beneficial interest in the property had been given to the public, and consequently the city could not alien it, nor could it be taken in execution for the payment of the municipal debts. In my opinion it is entirely clear that such an interest as this could in nowise be impaired either by lapse of time or by the acts or neglects of the municipal body to whom it had been confided. Unless the legislature itself intervened it would remain forever unalterably devoted to the purposes that had been the motive for its creation. These legal rules are too thoroughly established to justify the citation of authorities showing their prevalence.

Regarding then this grant to Jersey City as possessed of the nature and qualities thus imputed to it, and considering it in relation to the facts present in the record before us, it has not seemed to me that any legal question of considerable difficulty or abstruseness remains for solution.

97 The essential features of the case are thus presented.

The action is in ejectment by Jersey City to recover the submerged lands embraced in the legislature grant just explicated.

The statute, of course, forms the basis of the plaintiff's title, but under the terms of the act the city could not recover unless its right to the possession of the premises was made to appear. This could not be done without proving a compliance with the requisition of the third section of this law. It will be remembered that the regulation therein contained is to the effect that the city should pay into the State, or give to the State a bond for such sum of money, and on such terms as to payment and interest, as the board of riparian commissioners should under all the circumstances of the case, and taking into consideration the public purposes to which said lands were to be applied, fix and determine as a proper and equitable compensation to the State for such title. Following this direction the section then ordains "that until the giving of such bond, or the payment of such money said city shall not enter on said lands."

In order to show on the part of the city a fulfillment of this prerequisite to the right of taking the land into possession the plaintiff proved at the trial the adoption on the 9th of November, 1872, by the board of riparian commissioners of a certain preamble and resolutions to the effect that the mayor and aldermen of Jersey City should give to the State in fulfillment of the statutory provision just stated a bond for the sum of $1,000, payable in one year, with interest at the rate of seven per cent. per annum. In completion of this part of the plaintiff's case it was further shown that on the

fourth day of March, 1885, a bond bearing that date, was duly executed by the city conditioned for the payment of $1,000 in one year with interest at the rate of seven per cent. and was thereupon delivered to the treasurer of the State, and that the principal
98 and interest were subsequently paid to such treasurer. This bond was produced at the trial with the receipt of the State treasurer duly endorsed thereon.

This is a summary of the plaintiff's right of action as disclosed at the trial.

In defence it is insisted that this proof failed to show a fulfillment of the condition expressed in the third section of the act just referred to. The supposed flaw in the proof on this head is, that the bond called for by the resolution of the board of riparian commissioners was one to bear date on or about the 9th day of November, 1872, which was the date of the resolution passed by it, and that the bond actually given bore date March 4th, 1885, nearly thirteen years after the resolution of the commissioners.

But the satisfactory reply to this exception is that the statute obviously gave the right to the city to take possession at its own discretion with regard to time and that it was not required to give the bond until it proposed to do that act, so that the time of executing the bond was fixed neither by the act nor by the resolution of the board of riparian commissioners. In this respect it is deemed the act of the city conformed strictly with the requirement of the section under consideration and with the action of the riparian commissioners.

Nor is it deemed that if this were otherwise and that the conditions had not been in strictness exactly performed that the defendant could take advantage of such omission, after the State had accepted the money tendered in full satisfaction of its claim arising under the statutory provision in question. If the State has received this money and still retains it as a satisfaction of the requirement of the condition it is not perceived how this defendant, that in this connection must be regarded as a tresspasser upon these lands, can be permitted to intervene with its dissent.

We think the plaintiff showed by due proof both its title and its right of possession.

99 The next exception to the plaintiff's case taken by the counsel of the defendant is formulated in his brief in these words, viz: "The refusal by the city to accept the grant, and the action by the riparian commissioners induced by such refusal, and the subsequent acquiescence, constituted a substantial revocation by the State of the grant, and the assent of the city thereto."

As already shown the title to these premises was vested in the municipality by the statute on the 4th of April, 1872, and it did not capacitate itself to take possession by the giving of its bond until the 4th of March, 1885. During this long period of time, extending through nearly thirteen years, the city neglected to execute the trust confided to it, and on the contrary, permitted the defendant to acquire title to the property from the riparian commissioners; saw the defendant, at large expense, fill up and improve the land and

subjected it to the municipal taxes. It is this series of circumstances that is relied upon to operate as "a substantial revocation by State of the grant" in question.

The fallacy of this proposition is apparent at a glance. How can it be held that the State has revoked this grant when the State has in nowise, either directly or indirectly, participated in the affair? The assumption that the board of riparian commissioners was the agent of the State and as such conveyed the premises to the defendant is conspicuously unfounded. This board no more represented the State in this affair than did the chosen freeholders of the county represent it. The board was vested with power to dispose of the submerged lands owned by the State, but the tract of land here in dispute had been alienated by the State itself and the legal title placed in the plaintiffs for certain public purposes, so that it was in no respect whatever within the disposing power of these commissioners.

The riparian commissioners having no dominion over these premises could no more convey them than they could transfer to
100 the defendant the court-house of the county. Nor would even the joint action of the board and the city give a semblance of legality to the transaction. If the municipal corporation had by the most formal of writings assented to the commissioners' grant, or had joined in it as a party, the instrument would have been an absolute nullity. This result proceeds from the characteristics of the property in question, and which have been heretofore fully defined; the title is vested in the city, in trust for the public and is therefore inalienable and inde-posible except by legislative action. The *the* composition of the so-called title of the defendant it will be observed consists of the acquiescence and neglect of the trustee of a public use and the deed of a board having no power over the subject; such a claim seems to me singularly futile.

In the last place it was insisted that the plaintiff's right of action as exhib-ted at the trial, was incomplete on another ground.

This exception relates to a certain clause in the third section of the act already, in part recited, which declares that "nothing in this act shall prejudice or impair the rights of the shore owners to said lands."

It was argued that this defendant as the owner of the ripa had certain rights in the tract of lands in dispute which the plaintiff was bound to extinguish before it could take possession.

With respect to the nature of the rights thus asserted, the arguments of counsel were discreetly vague; and it must be owned that it is not easy to suggest, or even to imagine what "right to" these premises existed in this defendant as shore owner. Under the force of certain statutory provisions the interest of the shore owner in the submerged lands in front of his property is this: when such lands are to be sold the riparian commissioners are directed to appraise them, and, by way of preference, they are then to be offered to the riparian proprietors at the price thus fixed. It is obvious
101 that such a pre-emption gives to the owner of the ripa no present right in or to the property; it touches neither the

title or possession; it is a privilege the fruition of which is entirely future and potential merely and appears to be defeasible at all times by the act and at the will of the State. It is difficult to believe that this uncertain and precarious prerogative was that right of the shore owner in these submerged lands that is preserved beyond impairment by this proviso. But at present this injury is immaterial, for it is certain that there is no such title or right vested in this defendant that can serve as a bar to the present action. The statute has vested the proprietary right in the plaintiff and its right of possession is made to depend, not on the extinguishment of any supposed equity seated in the shore owner, but on the single condition to pay to the State the sum ascertained by the riparian commissioner.

The plaintiff is entitled to recover.

A true copy.

BENJ. F. LEE, *Cl'k*,
Per A. LAWSHE, *Dep'ty.*

102 STATE OF NEW JERSEY:

Court of Errors and Appeals, November Term, 1892.

In the case of—

AMERICAN DOCK & IMPROVEMENT COMPANY and MAYOR, &c., OF JERSEY CITY. } No. 31 of June Term, 1892. On —.

Date, December 9th, 1892.
Alex. T. McGill, C., presiding.
Opinion below — chief justice.

Check list.	Affirm.	Rever'l.
The chancellor	1	
" chief justice		
Mr. Justice Depue		
" " Dixon		
" " Garrison	2	
" " Magie	3	
" " Reed	4	
" " Scudder	5	
" " Vansyckel		
" " Werts	6	
Judge Bogert	7	
" Brown		
" Clement	8	
" Krueger		
" Smith	9	
" Whitaker		
Totals	9	

ALEX. T. McGILL, *C.*

Filed Dec. 9, 1892.
9—212

HENRY C. KELSEY, *Clerk.*

103 In N. Jersey Court of Errors and Appeals, November Term, 1892.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, Plaintiffs in Error, *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendants in Error.	In Error to Supreme Court.

Sufficient reason appearing therefor, it is, on this twelfth day of December, eighteen hundred and ninety-two, ordered that the record in the above cause in this court be retained for thirty days from this date and the remittitur be accordingly stayed for that time; also that leave is hereby given to the plaintiffs in error to apply for a further stay on good cause shown to the chief justice, who in such case, to his satisfaction, is empowered to authorize the same.

On motion of—

JOSEPH D. BEDLE,
Of Counsel of Plaintiffs in Error.

104 [Endorsed:] N. J. court of errors & appeals, Nov. term, 1892. The American Dock and Improvement Company, plaintiff in error, *vs.* The Mayor and Aldermen of Jersey City, def'd'ts in error. Order to retain record. Joseph D. Bedle, counsel of plaintiff in error. Filed Dec. 12, 1892. Henry C. Kelsey, clerk.

105 New Jersey Court of Errors and Appeals, November Term, 1892.

Between—

AMERICAN DOCK AND IMPROVEMENT COMPANY, Plaintiff in Error, *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendants in Error.	In Error to Supreme Court. Order on Affirmance of Judgment.

This cause having been duly argued at the June term, 1892, of this court by Benjamin Williamson and Joseph D. Bedle, of counsel for the plaintiff in error, and William D. Edwards and Gilbert Collins, of counsel for the defendant in error, and the court having considered the same and finding no error in the record or proceedings in the Supreme Court—

It is thereupon, on this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and ninety-two, ordered and adjudged that the judgment of the Supreme Court, removed by the writ of error in this cause, be affirmed with costs, and that the record be remitted to the Supreme Court, subject to the stay heretofore entered herein, to be proceeded with in accordance with this judgment and the practice of said court.

On motion of—

ROBERT S. HUDSPETH,
Attorney of Defendant in Error.

106 [Endorsed:] New Jersey court of errors and appeals, November term, 1892. American Dock and Improvement Company, plaintiff in error, *vs.* The Mayor and Aldermen of Jersey City, defendant in error. In error to Supreme Court. Order affirming judgment. Robert S. Hudspeth, att'y. Filed Dec. 29, 1892. Henry C. Kelsey, clerk.

107 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of errors and appeals of the State of New Jersey, Greeting: [SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The American Dock and Improvement Company, plaintiff in error, and The Mayor and Aldermen of Jersey City, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly
108 corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of January, in the year of our Lord one thousand eight hundred and ninety-three.

(Signed) JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
(Signed) GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

109 [Endorsed:] Supreme Court of the United States. The American Dock and Improvement Company, plaintiffs in error, against The Mayor and Aldermen of Jersey City, defendants in error. In ejectment. Writ of error to the court of errors and appeals of the State of New Jersey. Returnable within 30 days from date. J. D. Bedle, attorney & counsel; Robert W. de Forest, counsel. Copy lodged for The Mayor and Aldermen of Jersey City. Filed January 10, 1893. Henry C. Kelsey, clerk of the court of errors and appeals of New Jersey.

110 UNITED STATES OF AMERICA, *ss:*

To the Mayor and Aldermen of Jersey City, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals of the State of New Jersey, wherein The American Dock and Improvement Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this seventh day of January, in the year of our Lord one thousand eight hundred and ninety-three.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

111 [Endorsed:] Supreme Court of the United States. The American Dock and Improvement Company, pl't'ffs in error, against The Mayor and Aldermen of Jersey City, def'ts in error. Citation to defendants to appear. J. D. Bedle, attorney & counsel. Robert W. de Forest, counsel. Service of the within citation, with a copy thereof, and a certified copy of writ of error and of the supersedeas bond, with affidavit of sureties, hereby acknowledged. Dated January 11th, 1893. R. S. Hudspeth, att'y Mayor & Aldermen, J. C. Filed Jan'y 11, 1893. Henry C. Kelsey, clerk of the court of errors and appeals of New Jersey.

STATE OF NEW JERSEY, *Hudson County,* } *ss:*

On this eleventh day of January, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared Thomas F. Bedle before me, the subscriber, a notary public of New Jersey, and makes oath that on this day he delivered a true copy of the within citation to Robert S. Hudspeth attorney of the Mayor and Aldermen of Jersey City, and showed him the original; he also at the same time delivered to him a certified copy of the writ of error and of the supersedeas bond and affidavit of sureties thereto.

THOS. F. BEDLE.

Sworn to and subscribed the 11th day of January, A. D. 1893, before me—

THEO. RURODE,
[SEAL.] *Notary Public of the State of New Jersey.*

112 UNITED STATES OF AMERICA, }
State of New York, } *ss:*

John R. Maxwell, of Brooklyn, New York, and Henry W. Maxwell, of Brooklyn aforesaid (the persons named in the annexed bond), each being duly sworn according to law, on his oath saith; that he is worth in personal and real property fifty thousand dollars over all his just debts and liabilities.

JOHN R. MAXWELL.
HENRY W. MAXWELL.

Sworn and subscribed before me this 7th day of Jan'y, 1893.

W. C. JOHNSON,
[L. S.] *Notary Public for Kings Co.*

Certificate filed in N. Y. Co.

113 Know all men by these presents that we, The American Dock and Improvement Company, a corporation of New Jersey, as principal, and John R. Maxwell and Henry W. Maxwell, of Brooklyn New York State, as sureties, are held and firmly bound unto The Mayor and Aldermen of Jersey City, a corporation of New Jersey, in the full and just sum of ten thousand dollars, to be paid to the said The Mayor and Aldermen of Jersey City, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of January, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a court of errors and appeals in the last resort in all causes of the State of New Jersey, in a suit depending in said court between The American Dock and Improvement Company, plaintiffs in error therein, and The Mayor and Aldermen of Jersey City, defendants in error (the said suit being an action of ejectment originally commenced in the supreme court of the State of New Jersey by The Mayor and Aldermen of Jersey City against said company), a judgment was rendered against the said The American Dock and Improvement Company, and the said The American Dock and Improvement Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Mayor and Aldermen of Jersey City, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof:

114 Now, the condition of the above obligation is such that if the said The American Dock and Improvement Company

shall prosecute their said writ to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY,
By its President, and its Seal.
J. R. MAXWELL, [SEAL.]
President of The American Dock and Improvement Co.

Attest: SAM'L KNOX, *Sec'y.*

J. R. MAXWELL. [L. S.]
HENRY W. MAXWELL. [L. S.]

Sealed and delivered in presence of—
The words "certain attorney, executors, administrators" erased and "successors" interlined before execution—

J. D. BEDLE.

Approved by—

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

115 [Endorsed:] Supreme Court of the United States. The American Dock and Improvement Company, pl't'ffs in error, *vs.* The Mayor and Aldermen of Jersey City, def'ts in error. Bond on citation & for supersedeas. J. D. Bedle, Robert W. de Forest, counsel. Filed January 10, 1893. Henry C. Kelsey, clerk of the court of errors and appeals of New Jersey.

116 Supreme Court of the United States.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, Plaintiffs in Error,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendants in Error.

In Error to the Court of Errors and Appeals of the State of New Jersey.

Whereas in the special verdict or findings in the above cause it appears that "the maps, deeds, and instruments referred to and used in the case as hereinbefore mentioned are to be considered and taken as a part thereof and of this record," it is stipulated between the counsel of the parties that copies of said maps, deeds, and instruments need not be returned with the writ of error, but that the originals, as offered in evidence, shall be produced in the clerk's office of the Supreme Court, at Washington, by each party, as the same may be necessary, for printing and use before said Supreme Court.

It is also stipulated that each party will furnish copies of said deeds and instruments to the clerk of said Supreme Court, instead

of the originals, if he prefers or either party so desires, whenever it is necessary or proper for printing or use thereof.

Dated January 25, 1893.

J. D. BEDLE,
Counsel of the Plaintiffs in Error.
WM. D. EDWARDS,
Counsel for Defendants in Error.

117 [Endorsed:] Supreme Court of the U. S. The American Dock and Improvement Co., pl'ffs in error, *vs.* The Mayor and Aldermen of Jersey City, def'ts in error. In error to the court of errors and appeals of the State of N. J. Stipulation. Filed January 30, 1893. Henry C. Kelsey, clerk of the court of errors and appeals of New Jersey.

118 Supreme Court of the United States.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, Plaintiffs in Error,
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendants in Error.

On Writ of Error to the Court of Errors and Appeals of New Jersey.

Assignment of Errors.

Afterwards, &c., come The American Dock and Improvement Company, plaintiffs in error, by Joseph D. Bedle, their attorney, and say that in the record and proceedings aforesaid and in the giving of judgment there is manifest error in this:

1. That the said court of errors and appeals affirmed the judgment of the supreme court of the State of New Jersey upon the special verdict or findings, whereas in truth and in fact the said judgment should have been reversed by the said court of errors and appeals and judgment ordered entered in favor of the plaintiffs in error and against the defendants in error upon the said special verdict or findings.

2. The plaintiffs in error were shore owners, as referred to in "An act to cede to the mayor and common council of Jersey City
119 certain lands of the State now and heretofore under the tide waters of Communipaw bay, and to establish a tide-water basin adjacent thereto," approved April 4, 1872, and their rights as shore owners were recognized in and secured by the grant from the State of New Jersey to the Central Railroad Company of New Jersey, bearing date November 12, 1874, under the great seal of the State and the hand of the governor and the riparian commissioners and were never extinguished by the defendants in error, and the decision and judgment of the court of errors and appeals are an impairment of the obligation of the contract with the State of New Jersey under the said grant of November 12, 1874, and a deprivation of the property of the plaintiffs in error without due process of law.

3. It was never intended in the said act of the fourth day of April, 1872, to interfere with the rights of the shore owners until the city had fully extinguished or procured by contract whatever rights the shore owners had as such alone or in connection with the rights which they could acquire from the State as shore owners under the riparian acts. There was no lawful compliance by Jersey City with the said act of April 4, 1872, or any extinguishment or procurement of the rights of the plaintiffs in error as shore owners, and the decision and judgment of the court with reference thereto give a force and construction to that act, both as to the question of compliance therewith and the rights of the shore owners referred to
120 therein, which impair the obligation of the contract of the plaintiffs in error under the grant of November 12, 1874, aforesaid from the State and deprive them of their property without due process of law.

4. The riparian commissioners of the State of New Jersey had the power to sell and convey all lands of the State under tide water below high-water mark to shore owners to the exterior line for solid filling, with the right to build piers to the pier line, and the shore owners had a pre-emption right to such sale and conveyance. The *locus in quo* is within these lines. The legislature could not deprive the shore owners of their rights as such without compensation, and the act of April 4, 1872, was never intended to interfere therewith or the right of pre-emption aforesaid. The decision and judgment of the court of errors and appeals recognizes no rights in the shore owners of a legal or equitable character, and give no force or effect whatever to the proviso in the act of April 4, 1872, sec. 3, that the rights of shore owners shall not be prejudiced or impaired, whereas in truth and in fact the plaintiffs in error had lawful rights of property as shore owners and under the grant from the State of New Jersey of November 12, 1874, which could not and never were intended to be impaired by the act of April 4, 1872, and of which the plaintiffs in error could not be deprived without compensation under due process of law. The act of April 4, 1872, should have been construed by the court of errors and appeals consistently with the grant of November 12, 1874, under which the plaintiffs
121 in error claim, and so as to protect the rights of the plaintiffs in error as shore owners, including their rights under the riparian acts as represented in the grant of November 12, 1874, from any interference by the city until all such rights were lawfully compensated for.

5. By the decision and judgment of the court of errors and appeals the plaintiffs in error are deprived, without compensation and due process of law, of their property rights as shore owners and under the grant from the State of New Jersey of November 12, 1874, for which they have paid the State according to the terms of the deed or grant, and the contract in said deed is impaired thereby.

6. The grant of the State of New Jersey by the riparian commissioners was based upon the fact that the city had failed to comply with the act of April 4, 1872, and had repudiated the same. Ac-

cording to the special verdict or findings the city had failed and did not intend to comply with said act, and the riparian commissioners acted upon the same and treated the lands under water within the *locus in quo* as a part of the domain of the State and subject to sale and conveyance under the powers conferred upon them by the riparian acts, and also filed in the office of the secretary of state a vacation of the said *locus in quo*. The governor and the riparian commissioners so regarded the *locus in quo* and in good faith executed and delivered the grant of November 12, 1874, to the Central Railroad Company of New Jersey, for which the considera-
122 tion was duly paid to the State. This grant is entitled to the protection of this honorable court against any construction which will impair the obligation thereof or deprive the plaintiffs in error of their property without compensation or due process of law. When the grant of November 12, 1874, was executed and delivered by the State, Jersey City had repudiated the act of April 4, 1872, and had no right then or afterwards to accept the terms fixed by the riparian commissioners in 1872, and the *locus in quo* was a part of the public domain, subject to sale and conveyance by the riparian commissioners at the time of the execution and delivery of the grant of November 12, 1874; and in these respects the court of errors and appeals should have adjudged in favor of the plaintiffs in error and reversed the judgment of the supreme court of New Jersey.

7. The attempt of Jersey City in 1885 to comply with the terms fixed by the riparian commissioners in 1872 under the act of April 4, 1872, as claimed, was in no lawful sense a compliance with that act, and the decision and judgment of the court of errors and appeals to the contrary are an impairment of the obligation of the contract in the grant of November 12, 1874, and deprive the plaintiffs in error of their rights of property thereunder and as shore owners without due process of law.

8. The governor and the riparian commissioners were the proper representatives of the State to execute and deliver the grant of November 12, 1874, which grant is a patent and must be treated
123 as *ipso facto* a declaration by the State that the city had not complied with its act, and the city could not maintain an action of ejectment, in view of that fact, against the plaintiffs in error. An action of ejectment, under the ejectment acts of New Jersey, settles the question of property, and the judgment therein is a judgment that the property is the property of the plaintiffs in ejectment. The effect of a patent under these circumstances cannot be determined in an action of ejectment or without the direct intervention of the State through its attorney general. Neither the State nor its municipality, the mayor and aldermen of Jersey City, could maintain an action of ejectment as a naked question of property. If the State, through the instrumentality of its attorney general, seeks to set aside this patent, it could only be, if at all, upon equitable considerations, involving the return of the consideration money applicable to the grant of the *locus in quo*. This action of ejectment is in the name of the city alone, and the decision and judgment of the court

of errors and appeals violated the rights of the plaintiffs in error under the grant of November 12, 1874, and their right, if the grant is to be repudiated by the State, to the return of the consideration aforesaid and also to compensation for such expenditures as have been made upon the *locus in quo* upon the strength of the grant, and to such other equitable terms as may be imposed.

8. There was no compliance with the provisions of section
124 6 of the act of April 4, 1872, in any respect. Such a compliance was as essential under that act as a deed is to perfect a title to the purchaser of land, and the decision and judgment of the court of errors and appeals that the city had complied with the act of April 4, 1872, notwithstanding section 6 aforesaid, and were entitled to a judgment upon the special verdict or findings in their action of ejectment thereby deprived the plaintiffs in error of their property as shore owners and their rights under the grant of November 12, 1874, and impaired the obligation thereof.

9. Under the charter of the American Dock and Improvement Company, approved April 11, 1864, the plaintiffs in error had a right to purchase the lands which they held as shore owners, and by virtue of section 6 of the said act to fill up, occupy, possess, and enjoy the land under water in front thereof, including the *locus in quo*, whereas by the decision and judgment of the court of errors and appeals they are deprived of said right without due process of law.

10. At the time of the grant from the State of November 12, 1874, the city had failed or refused to comply with the conditions of the act of April 4, 1872, and the State of New Jersey were then in possession of the *locus in quo* as a part of the domain of the State, and thereafter there existed no right in the city under the act of April
4, 1872, to comply with the terms of the riparian commis-
125 sioners fixed in the year 1872, or to comply with or claim the benefit of the act of April 4, 1872, and the decision and judgment of the court of errors and appeals to the contrary impair the obligation of the contract with the State under the act of November 12, 1874, and deprive them of their property without due process of law.

Wherefore, for the errors aforesaid and for other errors appearing in the record and proceedings aforesaid, the plaintiffs in error pray that the judgment aforesaid of the court of errors and appeals may be reversed and annulled and for nothing holden, and the judgment of the supreme court of the State of New Jersey brought up into the court of errors and appeals be reversed and a judgment ordered entered in favor of the plaintiffs in error against the defendants in error upon the said special verdict or findings, and that the plaintiffs in error may be restored to all things they have lost on occasion of said judgments.

JOSEPH D. BEDLE,
Attorney for Plaintiffs in Error.

126 [Endorsed:] Supreme Court of the United States. The American Dock and Improvement Co., pl'ffs in error, *vs.* The

Mayor and Aldermen of Jersey City, def'ts in error. On writ of error to the court of errors and appeals. Assignment of errors. Joseph D. Bedle, att'y & counsel of pl't'ffs in error. Filed Feb'y 2, 1893. Henry C. Kelsey, clerk of the court of errors and appeals of New Jersey.

127 STATE OF NEW JERSEY, }
Department of State. }

I, Henry C. Kelsey, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that I have compared the above and foregoing with the original record and proceedings now remaining on file and of record in my office in the above-entitled cause, and that it is a correct transcript therefrom, and also a true copy of the "writ of error from the Supreme Court of the United States," "citation and service thereof," "bond on citation and for supersedeas and affidavit of sureties," "stipulation," and "assignment of errors."

Seal of the Secretary of the State of New Jersey.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this third day of February, A. D. 1893.

HENRY C. KELSEY,
Secretary of State and Clerk of the Court of Errors and Appeals.

128 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the court of errors and appeals of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The American Dock and Improvement Company, plaintiff in error, and The Mayor and Aldermen of Jersey City, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a
129 treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its

complaint appears, we, being willing that error, if any hath bee
should be duly corrected and full and speedy justice done to the pa
ties aforesaid in this behalf, do command you, if judgment be therei
given, that then, under your seal, distinctly and openly, you sen
the record and proceedings aforesaid, with all things concernin
the same, to the Supreme Court of the United States, together wit
this writ, so that you have the same in the said Supreme Court, a
Washington, within 30 days from the date hereof, that, the recor
and proceedings aforesaid being inspected, the said Supreme Cou
may cause further to be done therein to correct that error what c
right and according to the laws and customs of the United State
should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of th
United States, the seventh day of January, in the year of our Lor
one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

130 [Endorsed:] 3.100. Supreme Court of the United State
The American Dock and Improvement Company, plaintiffs i
error, against The Mayor and Aldermen of Jersey City, defendant
in error. In ejectment. Writ of error to the court of errors an
appeals of the State of New Jersey. Returnable within 30 day
from date. J. D. Bedle, attorney & counsel; Robert W. de Fores
counsel.

*The Answer of the Judges of the Court of Errors and Appeals in th
Last Resort in All Causes of the State of New Jersey within Named.*

The record and proceedings whereof mention is within made
with all things touching and concerning the same, we do certify t
the Supreme Court of the United States in a certain schedule to thi
writ annexed, as within commanded.

ALEX. T. McGILL,
*Chancellor, President Judge Court of Errors and
Appeals in the Last Resort in All Causes
of the State of New Jersey.*

Endorsed on cover: Case No. 15,253. New Jersey court of error
and appeals. Term No., 212. The American Dock and Improve
ment Company, plaintiff in error, *vs.* The Mayor and Aldermen o
Jersey City. Filed February 6, 1893.

MAR 30
JAMES H. McKENN

SOUTH COVE CASE.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

Case No. 15,253.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY,
Plaintiffs in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendants in Error.

Term No. 918.

IN ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

Brief of Defendants in Error.

GILBERT COLLINS,
WILLIAM D. EDWARDS,
JOHN A. BRAIN,
Of Counsel.

complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of January, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, Jr.,
Associate Justice of the Supreme Court of the United States.

130 [Endorsed:] 3,100. Supreme Court of the United States. The American Dock and Improvement Company, plaintiffs in error, against The Mayor and Aldermen of Jersey City, defendants in error. In ejectment. Writ of error to the court of errors and appeals of the State of New Jersey. Returnable within 30 days from date. J. D. Bedle, attorney & counsel; Robert W. de Forest, counsel.

The Answer of the Judges of the Court of Errors and Appeals in the Last Resort in All Causes of the State of New Jersey within Named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

ALEX. T. McGILL,
Chancellor, President Judge Court of Errors and Appeals in the Last Resort in All Causes of the State of New Jersey.

Endorsed on cover: Case No. 15,253. New Jersey court of errors and appeals. Term No., 212. The American Dock and Improvement Company, plaintiff in error, *vs.* The Mayor and Aldermen of Jersey City. Filed February 6, 1893.

Office Supreme Court U. S.
FILED.
MAR 30 1896
JAMES H. McKENNEY,
CLERK.

SOUTH COVE CASE.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

Case No. 15,253.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY,
Plaintiffs in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendants in Error.

Term No. 212.

IN ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

Brief of Defendants in Error.

GILBERT COLLINS,
WILLIAM D. EDWARDS,
JOHN A. BLAIR,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

Case No. 15,253.

THE AMERICAN DOCK AND IMPROVEMENT COMPANY, Plaintiffs in Error,	
AGAINST	Term No. 212.
THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendants in Error.	

ON WRIT OF ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

Argument for Defendants in Error.

The Mayor and Aldermen of Jersey City, a municipal corporation, brought an action of ejectment in the Supreme Court of New Jersey for lands in Jersey City against the American Dock and Improvement Company (a subsidiary corporation of the Central Railroad Company of New Jersey) in whose name the adverse record title stood at the commencement of the suit. The issue was tried before a Justice of the Supreme Court, a jury being waived by consent. The Justice made a special finding in the nature of a special verdict, and the Supreme Court after argument gave judgment thereon in favor of the plaintiff. A writ of error was taken to the Court of

Errors and Appeals—the Court of last resort of the State—and such judgment was affirmed. A writ of error was then allowed and issued out of this Court.

The references herein to the transcript of record, will be made by citing the pages of the printed case in this Court.

Jersey City, although located on the harbor of New York, and the terminus of most of the great railroad systems of the country, did not own any water front upon the Hudson River or New York Bay, and was entirely without public docks.

This water front had been taken up by these railroads for terminal purposes; very few of its streets ran to the river. The State Board of Riparian Commissioners in their reports for 1871 and 1872 called the attention of the State Legislature to this fact, and recommended that a part of the large basin laid out by the State in 1864 on the southerly side of Jersey City should be conveyed to that municipality for public uses. This tidal basin ran up into the city from the Hudson River; its location is shown on the maps printed in the case.

The land in question was ceded by the State in pursuance of this recommendation to the corporation of Jersey City, April 4th, 1872 (Session Laws of N. J., p. 1356; Transcript, p. 4). This land was at the date of the act, entirely covered by tide-water (Trans., p. 26).

This act of 1872 in Section 3, enacted that for *the title* conveyed, the City should pay into the Treasury of the State, or give to the State a bond for such sum of money, and on such terms as to payment of interest, as the Board of Riparian Commissioners should fix, and that until the giving of such bond the City should not enter on such lands. On November 19th, 1872 (Trans., p. 6), the Riparian Commissioners fixed the price for the lands at $1,000, and directed a bond for that sum, payable in one year, with interest at 7 per cent. to be given to the State. A resolution accepting the grant was passed by the Board of Aldermen in 1872, which resolution was vetoed by the Mayor, upon the ground, among others, that the proper Board to take action in the premises under the charter of the City was the Board of Public Works. The Aldermen, after getting the opinion of the City Attorney

(Trans., p. 15), that such was the true construction of the charter, directed the subject to be certified to the Board of Public Works for their consideration and then unanimously sustained the Mayor's veto.

The matter slept until 1885, when the Board of Public Works, with the concurrence of the Board of Finance and Taxation, passed resolutions formally accepting the grant, and directing a bond to be given, in conformity with the terms imposed by the Riparian Commissioners (Trans., p. 8). The bond was given and afterwards paid (Trans., p. 9). Almost immediately thereafter the action of ejectment was brought.

In 1874, the State Board of Riparian Commissioners, on the assumption that Jersey City had failed to accept the grant, attempted to "vacate" the same, and subsequently, in the same year, included this tract, so ceded to Jersey City in their grant to the Central Railroad Company of New Jersey, of twelve large tracts of land under water in the Bay of New York, the Kill von Kull, and Newark Bay, in the County of Hudson; in the Arthur Kill in the City of Elizabeth, and Staten Island Sound in Union County; in the Arthur Kill and Staten Island Sound in Middlesex County, and under the tide-waters of the Raritan River in the City of Perth Amboy. The consideration for this immense grant was $300,000. The tract in question formed an insignificant portion of the lands granted, and was evidently thrown in to round out the company's land so far as the Commissioners could. As will be noticed, the Commissioners also included in their deed the well-known "West Line Grant," if they had power to grant it. (Trans. p. 23, bottom.) Their power to grant it was afterwards denied by the Courts because of a prior grant.

Am. Dock & Impt. Co. *v.* Trustees, 39 N. J. Eq., 409.

The Central Railroad Company, or their grantees, have claimed to be in possession of the tract in question since this attempted grant of the Riparian Commissioners, but took no step toward any substantial reclamation before the commencement of this suit—see map of 1886, offered by the plaintiffs in error. At the time of the beginning of this action the title

derived from the Central Railroad Company was in the name of The American Dock and Improvement Company the present plaintiffs in error.

Nature of the State's Title to Lands Under Water.

The decision of the Courts of New Jersey have finally established as the settled law of the State, that the State as the successor to the title of the British Crown, became the owner of all land within its territory under tidal waters below high-water mark. It is settled also that the State may sell and convey in fee simple all its land and confer upon the grantee an ordinary fee simple title and that the grantee may fill up the same or otherwise take exclusive possession unless restricted by the terms of the grant.

> Stevens *v.* Paterson & Newark R. R. Co., 34 N. J. Law, 532, 545.
>
> Am. Dock & Impt. Co. against Trustees, 39 N. J. Eq., 409, 413.

The use or abuse of this power of the State to grant its lands under water by statute and through the agency of the Board of Riparian Commissioners, established in the year 1869, has been such that probably most of the citizens of New Jersey regret that it was ever possessed by the Legislature.

In Martin *v.* Waddell, 16 Peters, 367, Justice Thompson in a dissenting opinion expressed the view that whatever title the State held in lands under navigable water must be held in trust for the common benefit and must be inalienable.

In Wooley *v.* Campbell, 37 N. J. Law, 163, 167, Justice Depue refers to this dissenting opinion, and points out that this question has been set at rest in New Jersey by the decision in Stevens *v.* Paterson & Newark R. R., and that it has been determined that the title of the State is proprietary and may be conveyed for either public or private use. This view has been held controlling in the United States Supreme Court as to New Jersey titles of this character.

> Hoboken *v.* Pa. R. R., 124 U. S., 656.

In the case of the Illinois Central R. R. *v.* The State of Illinois, 146 U. S., 387, the Court adopted the view that the State's title to lands under water in the State of Illinois was held in trust, and that it was not competent for the Legislature to deprive the State of its ownership of submerged lands in the harbor of Chicago, and of the subsequent control of its waters, and approved the language of the Court in Arnold *v.* Mundy, 6 N. J. Law, p. 1, which was overruled in the Courts of New Jersey, as explained in Wooley *v.* Campbell, 37 N. J. Law, 166.

We submit that the decision of the Illinois case cannot modify the settled law of New Jersey as expressed in its decisions and statutes (Hardin *v.* Jordan, 140 U. S., 402; Shively *v.* Bowlby, 152 U. S., 46); but for the purpose of this case it is not material whether the law as established by the New Jersey Courts and sanctioned in Hoboken *v.* Pa. R. R. shall prevail, or whether the doctrine declared in the Illinois case shall be applied in New Jersey. The Act of 1872 grants the land in question to the City, a municipal corporation, itself a branch of the State Government and grants it to be held on the identical public trusts, which, in the Illinois Central R. R. case, are declared to be applicable to the title of the State to all lands under tidal water. As Chief Justice Beasley says in his opinion:

> "And while it is thus clear that this was a legislative "conveyance of an estate in fee *presenti*, it is equally "clear that it had not the force of vesting in the city "this tract as its private property. *The municipality* "*was made the recipient and custodian of it exclusively* "*for public uses.* This purpose is expressly declared in "the preamble above cited, and it is likewise expressed "in all its regulations and provisions. The proposition "is self-evident. * * * * Unless the legislature "itself intervened it would remain forever unalterably "devoted to the purposes that had been the motive for "its creation. These legal rules are too thoroughly es- "tablished to justify the citation of authorities showing "their prevalence."

This tract is a petty parcel of the princely domain of the State of New Jersey, which, by the act of 1872, the legislature sought to rescue from the general sacrifice of public lands under water in New York Bay and adjacent waters.

The validity of this grant by the Statute of 1872 to the City was in issue and was sustained in the case of the Easton & Amboy R. R. *v.* the Central R. R. of N. J., 52 N. J. Law, 267, 274 to 276, where the act is construed and is adjudged to be an immediate grant in fee, and this ruling is supported by the citation of pertinent decisions of this Court. In the case now under review the Court of Errors and Appeals affirmed the judgment of the New Jersey Supreme Court adopting the opinion of the Chief Justice. This will be found in the Transcript on page 60, and we cite it as an impregnable argument to sustain the title of the City.

I.

No Federal Question was Raised or Decided in the State Court or is Raised by the Case.

(*a.*) The grounds assigned for error in the Court of Errors and Appeals will be found in the Transcript on pages 57 and 58. No federal question is raised or suggested there, nor was any raised before the Judge who tried the case at Circuit. The fourth assignment disputes the constitutionality of the statute making the grant to the City, but it is not stated that the federal constitution is infringed, and the opinion shows that the objection insisted upon under this point was, that the act was in conflict with a provision of the State Constitution requiring that "every law shall embrace but one object." (Trans., p. 61.)

As provided in the U. S. Rev. St., Sec. 709, the judgment of a State Court may be re-examined on writ of error in two classes of cases.

First.—Where a State Statute or the validity of authority exercised by a State is drawn in question as repugnant to the federal constitution.

Second.—Where a privilege or an immunity is claimed under the United States Constitution and the State Court decision is against the privilege or immunity "specially set up or claimed under such constitution."

No statute was drawn in question before the State Court as repugnant to the federal constitution, no exercise of State authority is challenged, and no privilege or immunity was "specially set up or claimed under such constitution." Even, therefore, if the controversy might have involved these questions, the case has not been brought within the jurisdiction of this Court, and the writ of error should be dismissed.

Leeper *v.* Texas, 139 U. S., 462.
O'Neill *v.* Vermont, 144 U. S., 323, and cases there cited.

(*b.*) The assignments of error in this Court present no federal question. In these assignments (Trans. p. 71), certain phrases appeared borrowed from the constitution and certain statements of fact are made, but no intelligible propositions are presented. "A real and not a fictitious federal question is essential to the jurisdiction." St. Louis, &c., R'y *v.* Missouri, 156 U. S., 478, 483.

The clauses of the constitution supposed to have been infringed are those which provide that no State shall pass any law impairing the obligation of contracts, and that no State shall deprive any person of property without due process of law; but it would seem that the pleader had before him a spurious copy of the constitution. He apparently supposed that the provision was that *no Court* should by its decision and

judgment impair the obligation of a contract or deprive any person of property without due process of law. The second assignment is a fair sample of the others, and it concludes as follows: "*The decision and judgment* of the Court of Errors and Appeals are an impairment of the obligation of the contract with the State of New Jersey under the said grant of November 12th, 1874, and a deprivation of the property of the plaintiffs in error without due process of law." In view of the facts of the case, it would have been hard to frame an assignment based on the genuine language of the constitution. The only law passed by the State, of which the company complains, is the statutory grant to the city of 1872, and the grant to the company on which they rely as a contract with the State, was made in 1874. That act expressly reserves the right, if any, of the riparian owner. The plaintiffs in error could not well assign for error that a law passed in 1872 impaired the obligation of a contract made two years later, but in trying to avoid this absurdity, they fell into one equally conspicuous by alleging that the decision and judgment of a Court of general jurisdiction in a litigated ejectment suit, is a taking of property without due process of law. Such decision and judgment constitute due process of law; "law in its regular course of administration through Courts of justice is due process." Leeper *v.* Texas, 139 U. S., 462.

To raise the constitutional question of impairment of contract, there must be pointed out a contract and a subsequent statute impairing it. "Not only must the obligation of a contract have been impaired, but it must have been impaired by a law of the State." New Orleans Water Co. *v.* La. Sugar Refining Co., 125 U. S., 18, 20; followed in St. Paul R'y Co. *v* Todd County, 142 U. S., 282, 285.

"A State cannot be deemed guilty of a violational of this constitutional obligation simply because one of its Courts has made an erroneous decision." Arrowsmith *v.* Harmoning, 118 U. S., 194; Marrow *v.* Brinkley, 129 U. S., 178, 181; New Orleans *v.* New Orleans Water Co., 142 U. S., 79.

"When the State Court decides against a right claimed under a contract, and there was no law subsequent to the con-

tract, this Court clearly had no jusrisdiction." New Orleans Water Works Co. *v.* Louisiana Sugar Refining Co., 125 U. S., 18, 38.

II.

Discussion of the Merits.

Should the Court find any jurisdiction to examine the merits of the controversy, we think that no grounds for reversal can be found.

(*a*) Shore owners had no title to the land under tidal waters at common law or by statute.

An argument was made in the Court below that the Shore owners, to whose title the plaintiffs in error claim to have succeeded, held some title to the land under water in front of their property prior to the year 1872, and that the Act of 1872 was a taking of that title by statute without compensation.

At first sight it might be supposed that a federal question is raised here, namely, whether by the statutory grant of 1872, the State deprived the Riparian owners of property without due process of law ; but an examination of the Act of 1872 will explain why the plaintiff in error did not think fit to raise that point in their assignments of error, and why the argument of counsel upon it was, as the Chief Justice states, "discreetly vague." (Trans., p. 64). The third section of the Act (Trans., p. 5,) contains a proviso that "nothing in this act contained shall prejudice or impair the rights of the shore owners to said land." In face of such a proviso it is impossible to charge the State with taking by this Statute any rights of the Riparian owners, and the inquiry in the ejectment suit was merely whether the Statute granted title to the City, and if so, whether the shore owners had any rights in the granted lands or any part thereof. On this

point the law of the State as declared by its Courts is controlling.

This Court will be governed by the rule stated by Justice Brewer in Hardin *v.* Jordan, 140 U. S. 402: "Beyond all dispute the settled law of this Court, established by recent decisions, is, that the question how far the title of a riparian owner extends is one of local law. For a determination of that question the statutes of the State and the decisions of its highest court furnished the best and final authority." This statement of the law is quoted with approval in Shively *v.* Bowlby, 152 U. S., 46, a case which contains an exhaustive review of the riparian law of the several States, and an accurate statement of the law of New Jersey relative to the State's title to lands under navigable water.

(*b*) The plaintiffs in error claim that they are shore owners, and that the act of 1872 recognizes a right in them as such, in the tract granted, which the city must extinguish. This fact they say arises from the proviso of the third section, "provided nothing in this act contained shall prejudice or impair the rights of the shore owners to the said lands."

To this we reply, in the first place, that they are not shown to be shore owners. The case shows (Trans., p. 55) that in 1837 Cornelius Van Vorst was in possession of the entire shore opposite the tract in question, under claim of ownership. No possession or deed from him was shown by the plaintiffs in error. They did, indeed, show deeds to them by other persons, made in recent years, purporting to cover the entire frontage of the shore, but the intermediate title was not given and no proof whatever of possession of any of the grantors was offered. This defect of title is not urged merely as a defect which may be supplied, but it is substantial. The title to this shore has always been disputed, and the Court may rely upon it that the failure of the plaintiffs in error to produce the entire title was no mere oversight. They were fully warned on the subject. (Trans., p. 30.)

The maps show that the Morris Canal runs along a large portion of the shore directly involved, and there is no pretence that

the plaintiffs in error have the Canal Company's title. We refer to the maps.

But supposing the plaintiffs in error to be shore owners, this proviso in the act of 1872 gives them no title to the lands under water, nor any rights they did not have before.

The pre-emption right given to the riparian owners by the eighth section of the Riparian Act of 1860 is of grace and not of right. (The American Dock and Improvement Company, et al, *vs.* the Trustees for the support of Public Schools, 39 N. J. Eq., 409–420).

The Legislature may authorize a special grant of land under water not in conformity with the provision of that act. (Same case).

The Yosemite Val. case, 15th Wall, 77.

It is probable that this proviso does not refer to any supposed rights of the shore owners in lands under water at all, but only in rights to the shore, or under the wharf act of 1851 below referred to, for it is evident from the act itself that it was not quite certain in the mind of the draftsmen whether all the lands described in the act were under water, or not. The granting clause only cedes "so much and such parts of the lands" (described) "which are now under tide water, or heretofore were under tide water of said Communipaw Bay." The State did not desire even to appear to grant lands that it did not own; hence the proviso.

As a matter of fact the tract was all under tide water.

The right of the shore owner to have even access to the water beyond high water mark is held in the Courts of New Jersey (differing in that regard from the Courts of some other States) to be a mere license revokable at the will of the State. Stevens *v.* Paterson &c. R. R., 34 N. J. Law, 532, 545, where a riparian owner proceeded to fill in the lands owned by the State adjacent to his premises, his possessory title was anciently recognized to the land actually reclaimed, and an act called the "Wharf Act" was passed in 1851 recognizing such titles under certain restrictions (N. J. Rev., p. 1240). This act was repealed as to the waters of New York Bay in 1869.

This act was repealed as to the waters of New York Bay in 1869 by the act establishing a Board of Riparian Commissioners (N. J. Rev. 982, Sec. 9). The State, however, freely exercised the right to grant, by statute, lands under water without regard to the effect upon the adjacent shore owner, and cases of hardship arose, notably by the action of the Central Railroad Co. of N. J. in New York Bay. The maps in evidence show that the embankment constructed by this Company in the bay in the exercise of its chartered right to build a railroad, ran parallel for over a mile with the shore of Jersey City and cut off a large number of shore owners from a direct access to the tide water of the bay, which they had theretofore enjoyed. To mitigate in the future such hardships, the legislature by the act of 1869, which gave to a Board of Riparian Commissioners the power to fix a price on lands under water, along the shore, and to make leases and sales thereof, imposed a limitation on the powers of the Board, and required the Board to give to the riparian owner the first right to buy or lease land at the price fixed.

This pre-emption privilege was not a grant of any title, but simply put a restriction—not on the title of the State—but on the powers of the Board. The statute is as follows :

Sec. 8 * * * * provided, that no grant or license shall be granted to any other than a Riparian proprietor, until six calendar months after the Riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secure to be paid, the price that said Commission shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officers doing the duties incumbent upon President, Secretary, Treasurer, or director, and in case of a non-resident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson County, and in a daily newspaper published in New York City.

N. J. Rev., p. 984, proviso to Sec. 8.

The privilege thus given to the Riparian owner in the case

of grants by the Board as Agents of the State, does not confer any title on the Riparian owner in the lands of the State, any more than a similar restriction on the power to sell given to a private agent would confer on the person in whose favor it was imposed, any interest in the land of the principal. The legislature retained and has occasionally exercised the power to grant lands under water without the interposition of this board, and without recognizing any right in the Riparian owners to lands under water.

Am. Dock & Impt. Co. *v.* Trustees, 39 N. J. Eq., p. 411 to 415, and p. 419 to 421.

(*c.*) The plaintiffs in error claim that as they have a grant of the lands involved under the great seal of the State, their title can be impeached only by direct proceeding, and in view of the intervening equities, only in a Court of equitable jurisdiction.

To this we answer, that the act of the Legislature of April 4th, 1872, was itself a solemn grant of the highest character by the sovereign power, and was prior in point of time to the grant made through the agency of the Riparian Commission. While the grant of the State cannot be attacked collaterally, yet where there are two grants the well-known maxim, *Prior in tempore potior in jure*, prevails. This is self-evident, and seems to have been assumed in American Dock and Improvement Co. *v.* Trustees of Public Schools, 39 N. J., Eq. p. 409.

If there be any equities in favor of the plaintiff in error they should have asserted them by bill in chancery to enjoin this action at law until the alleged equities were adjudicated. The Court in this action is only concerned with legal titles.

That the title vested in Jersey City instantly when the act was passed, although the right to enter was postponed until the giving of the bond, is too plain to need argument. The language of our deed, the act is, "The State doth hereby grant to the Mayor and Aldermen of Jersey City in fee simple, &c." That such was the effect of this particular

grant has been expressly declared in the case of The Easton & Amboy Railroad Company *v.* The Central Railroad Co. of N. J., 52 N J. Law, 267–274, where Depue, J., says, "The operative words of present grant are 'The State doth hereby grant,' import a grant *in praesenti*, and confer an immediate estate. When these words are used in a legislative grant, unless there be other clauses restraining the operation of the words of present grant they must be taken in their usual legal sense to import an immediate transfer of title." (Citing case). "If there be conditions subsequent annexed to such a grant, no one but the State or its representatives can take advantages of a forfeiture arising from a failure to perform such conditions." (Citing cases). "The third section of the act is plainly a condition subsequent to the vesting of the grant."

The case cited, in which this opinion was delivered, involved the adjoining public tide water basin established by the same act of April 4th, 1872, and it was urged that the basin was dependent upon the Jersey City grant, and as that had never been accepted by the city, the tide water basin itself had never come into legal existence. It will be seen, therefore, that the construction of this grant to Jersey City was directly involved in that case.

(*d.*) It is claimed by the plaintiffs in error that Jersey City rejected the grant, and that, therefore, the riparian commissioners might properly convey the lands.

To this we answer:

First.—That the City had no right to reject the grant. It was competent for the Legislature to compel its creature to take upon itself this gift, whether it would or not, and Section 3 expressly enacts that the City *shall* pay into the treasury of the State, or give bond to the State, etc.

After the Riparian Commission fixed a price a duty arose to pay or secure the same, and if, after reasonable time for performance, that duty remained unperformed, mandamus would lie on behalf of the State, at the instance of the Attorney-General, to compel its performance. In considering this

identical grant, Mr. Justice DEPUE, in Easton & Amboy R. R. Co. *v.* Central R. R. Co., 52 N. J. Law, 367, 275, says:

"Nor did the grant require an acceptance by the City. The Legislature was dealing with a municipality with respect to a matter relating to municipal affairs. The Legislature may at its own will create or extinguish a municipality, or impose upon it a new charter or an amendment to its charter. It may also impose duties involving the outlay of money in improvements such as laying out and making roads, establishing public markets, wharves or docks and the like. Usually these matters are effected by a grant of power to buy lands and make the improvement thereon, but that the Legislature may of its own will impose a duty upon the municipal authorities in this respect which they cannot decline is undoubted."

Cooley Const. Lim. (5th Ed.) 204, 282, 283; 1 Dill. Mun. Corp. 23; Rader *v.* Township of Union, 10 Vroom, 509, 512, 517; State, Freeholders of Hudson *v.* The Paterson Avenue and Secaucus Road Commissioners, 12 *Id.*, 83, 87; S. C., 13 *Id.*, 608.

"Where the State makes a grant of lands to a municipality acceptance, payment of a consideration, expenditure of moneys in appropriating the lands to the designated use, are circumstances entering into the power of the State to resume the grant, but are not conditions precedent to the consummation of the grant unless expressly made so by its terms. The grant to Jersey City executed itself, and no one but the State could repudiate or recall it."

SECONDLY.—We say that there was no rejection. What occurred was, that the Board of Aldermen, which had no power at all in the premises, passed a resolution to accept the grant. This resolution the Mayor vetoed, assigning, among other objections, that the Board of Public Works, was the proper Board to act. In this view, the Board of Aldermen, after taking the opinion of its legal adviser, acquiesced, and referred the matter to the Board of Public Works. For the correctness of this action, we need no better reasoning than

that of the learned City Attorney, whose opinion to the Board of Aldermen is found at page 15 of the Transcript, to which we refer the Court to avoid needless repetition. There seems to be no escape from his conclusion. The concurrent action of the Board of Finance and Taxation was not then required but was imposed by subsequent amendments to the City charter.

That the Board of Public Works took no action up to 1874, when the Central Railroad Company of New Jersey sought to acquire the property is immaterial. As Mr. Justice Depue said in the case above cited (52 N. J. Law, 275): "The Legislature evidently contemplated a postponement of the time when the City should take possession and enter upon the improvement of the premises."

Mr. Justice Dixon, in deciding the only question of fact involved in the present case, says (Trans., p. 4), that the parties to the riparian grant of 1874 "acted with full knowledge of what had been done and omitted by the City authorities", and, of course, the company is chargeable with knowledge of the law and must be presumed to have known that it could not get a *title* to the lands, and the most that it could acquire was the right to possession until such time as Jersey City should take the necessary steps to enter; or, in other words, until the Public Boards of Jersey City should perform the duty enjoined on them by law.

(*e.*) The plaintiffs in error claim that the Riparian Commissioners could at any time have revoked their action fixing the price for lands, and that in "vacating" the Jersey City grant and conveying the same lands to the Central Railroad Company of New Jersey, the commission did impliedly revoke such action, and that before Jersey City can avail itself of the title granted by the Act of 1872, it is necessary to apply to the commission to fix a price to be now paid which price, owing to changed conditions, may differ greatly from that originally fixed.

To this we answer, first, that the Riparian Commissioners could act but once. Their duty was to fix a price and to do so promptly. The money was not payable to them, but to the State, which had the right to enforce payment at any time.

The duty of the Riparian Commission once performed, was ended, and they had no further power in the premises.

Secondly, their action of 1874, was not implied revocation. If they had any power at all it would be to change the price. What they attempted to do was to " vacate " the grant altogether, and their action was inconsistent with a fixing of price. They have never to this day attempted to make any change in the price. It is noteworty that while in the draft of the vacating resolution made by Jacob M. Clark, acting for the Central Railroad Company of New Jersey; which was submitted to the Riparian Commission for its approval, it is recited that Jersey City had " failed and *refused* to comply with the terms, &c." (Trans. 6 54), the Commission declined to adopt this claim, and in the resolution passed by them, otherwise reciting the Clark draft, is is recited simply that the City had " failed to comply with the terms, etc." (Trans. p. 17).

The Commissioners found no refusal, simply delay, which delay surely was not unreasonable; and no delay of public officials can be imputed to the municipality itself.

(*f*.) The plaintiffs in error claim that they have equities arising from reclamation, and the payment of taxes to Jersey City. On the latter point they seem to claim an estoppel.

As to reclamation, nothing had been done at the time of the commencement of this suit on the tract in question, except to build a causeway to reach the Central's lands to the south of the tract. Much has been done pending this suit, but with that we are not concerned. (See map).

As to taxes, the Company have possession and ought to have paid taxes. Taxes are never presumed to be more than an equivalent for the use of the property. Since the giving of the bond, while indeed taxes have been imposed because litigation was uncertain, they have not been paid, and the assessment was subject to the following qualifications: "The corporation of Jersey City claims to own the above tract of land, though the title to the same is somewhat involved. It is the intention of Jersey City not to waive any rights she may have

in the same, nor the rights of the city to be in any way affected in said property by putting the same tax levy." (Trans. p. 52).

On both of these points, the remedy of the plaintiff in error, if any, is equitable, and must be obtained through suit by them in proper forum. The mere fact that the plaintiff in error has equities cannot avail to drive the defendant in error into a Court of Equity to sustain its legal rights.

> Am. Dock & Impt. Co. *v.* Trustees, &c., 39 N. J., Eq. 409, 443, 450–1.

The defendant has not yet sought relief in Court of Equity, although the original judgment in this case was rendered in 1892.

(*g*) The plaintiffs in error claim that they have a title under the Am. Dock & Improvement Company's charter or that of the Central Railroad Company of New Jersey.

This has been fully disposed of in the case last cited, and it would be a waste of time to enlarge on an exhaustive examination of this subject, made by Mr. Justice Depue, beginning at 421 and extending to page 437. The tract now in question is much further from the Caven Point property than was the West line grant which was before the Court in the case last cited. The West line grant lies between the land in question and Caven Point.

(*h*) It is claimed by the plaintiffs in error that this suit must fail and that no suit can be brought by the defendants in error until a map and description is filed as required by section 6 of the act of 1872, and that we can show no title under said act, except by the map and description which are to be "filed, and are made plenary evidence of title under this act of the City to the lands so described and granted."

To this we reply, first, that the filing of the map and description did not create the *title*, but was only intended to prescribe and preserve the *evidence* of that which already existed without them, and secondly, as all the lands described lay under tide water in 1872, no map and description were

necessary, for it was only a map and description of so much as lay under the tide water as was directed to be filed. The evident purpose was to preserve in a convenient and readily accessible form the evidence of what had laid under water, and therefore came within the grant. See 52 N. J. Law, page 275.

We respectfully submit that the judgment of the Court of Errors and Appeals should be affirmed.

GILBERT COLLINS,
WILLIAM D. EDWARDS,
JOHN A. BLAIR,
of counsel for Jersey City.